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ABSTRACT

The issues of collective bargaining as they are being discussed and debated at the University of California-Berkeley are presented. The paper is divided into 5 sections, the first being a discussion of the legal framework within which the debate is presently being conducted. This section also includes a detailed discussion of proposed changes in the present public employee law, since much of the debate at Berkeley is being conducted with an eye to the future. The next section discusses the indirect and direct reasons for organizing aside from preparing for a change in the law. The third section describes the nature of the competing organizations and the approach to collective bargaining. With these 3 sections completed, the last 2 parts of the paper are devoted to an in-depth discussion of the issues of collective action at Berkeley and how they would be affected by change in the existing law. It is the thesis of this paper that the resolution of these issues of collective bargaining will have a profound effect on the Berkeley campus. (Author)

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Issues of Collective Bargaining at the
University of California-Berkeley

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Frank R. Kemerer
November 1973

#E084919

In preparing this paper, I have incorporated material gathered from the following interviews:

1. Dr. Thomas Ambrogli, Associate Director, Western Regional Office of the AAUP in San Francisco.
2. Mr. Sam Bottone, Executive Secretary, University Council - American Federation of Teachers (UC-AFT).
3. Dr. Albert Bowker, UCB Chancellor.
4. Dr. David Feller, UCB Professor of Law and Chairman of the Berkeley Faculty Association.
5. Dr. Joseph Garbarino, Professor, UCB Institute of Business and Economic Research.
6. Mr. William Hayward, Director of Communication, California Higher Education Association (CHEA is the staff section for the California Teacher Association's higher education divisions).
7. Dr. Paul Seaver, Professor of History at Stanford University and past President of the campus chapter of the American Association of University Professors (AAUP).
8. Dr. Alvin H. Thompson, formerly UCB Professor of Education and past President, UCB Chapter of California College and University Faculty Association (CCUFA is a higher education division of the California Teachers Association).
9. Dr. Jack Washburn, UCB Professor of Material Sciences, and President, UCB chapter of the AAUP.

These references are appropriately footnoted where relevant.

TABLE OF CONTENTS

	Page
Introduction	1
The Legal Framework	1
Causes for Organizing	2
The Competing Organizations at UCB	40
The Issues and Their Implications	50
Discussion and Conclusions	71
Appendix	92

INTRODUCTION

The University of California was incorporated into the California Constitution in 1849. But not until nineteen years later did the Governor and Legislature issue its charter. At present, there are nine campuses throughout the state with a total enrollment of more than 108,000 students. Instruction began at Berkeley, the flagship campus in the UC System, in 1873. In 1971, Berkeley was rated by the American Council on Education (ACE) as the top graduate school in the country.

Today Berkeley is in trouble. Beginning with the 1964 Free Speech Movement, the campus has suffered the worst of campus radicalism. While it has weathered radicalism well, it has not fared so well with the transition from a growth to no-growth period and with the backlash of a more conservative Governor, Legislature, and the general public.

On another front, pressure is building for a new public employee collective bargaining law. Although Governor Reagan recently vetoed legislation conveying comprehensive collective bargaining rights to all public education employees in California, passage of such a measure is only a matter of time. And there is every indication that when such a law is passed, it will cover all employees of the University of California, including the teaching faculty.

This paper seeks to explore the issues of collective bargaining as they are being discussed and debated at Berkeley. The paper is divided into five sections, the first being a discussion of the legal framework within which the debate is presently being conducted.

This section also includes a detailed discussion of proposed changes in the ^{present} public employee relations law, since much of the debate at Berkeley is being conducted with an eye to the future. The next section discusses the indirect and direct reasons for organizing aside from preparing for a change in the law. The third section describes the nature of the competing organizations and their approach to collective bargaining. With these three sections completed, the last two parts of the paper are devoted to an in-depth discussion of the issues of collective action at Berkeley and how they would be affected by a change in the existing law. It is the thesis of this paper that the resolution of these issues of collective bargaining will have a profound effect on the Berkeley campus.

THE LEGAL FRAMEWORK

Introduction

Although unionization can occur in the absence of a collective bargaining law through voluntary agreement of the parties, the presence of permissive legislation has been identified as the single most effective predictor of unionization.¹ Consequently, in California there has been a strong effort by a variety of groups to get a new plan passed granting full bargaining rights to employees in the public sector. This effort succeeded in part with passage of the Moscone Bill by both houses of the California Legislature this past September. The Moscone Bill extended collective bargaining rights to all of California's public schools and campuses, involving more than 500,000 people. Governor Reagan, however, vetoed the bill as expected, claiming that "I do not believe that California taxpayers want to support collective bargaining and/or strikes in our educational system."*

¹N.S. Bucklew, "Employment Relations of Staff Employees in Institutions of Higher Education," The Journal of the College and University Personnel Association, March, 1971, p. 61.

*The Moscone measure, as detailed below, was amended to eliminate wording which could be construed to permit strikes. The Governor acknowledged this fact but in his veto message went on to point out that the bill contained no express prohibition against strikes, unlike legislation now on the books, and that the teacher organizations backing the bill favor legalizing strikes by public employees. "We can only assume", concluded the Governor, "that by later court tests or by amendments that this questionable 'goal' will be pursued." The Governor ignored the fact that a plethora of unauthorized strikes was a prime motivation for the new measure. Experts on the subject of public employee bargaining have revealed that after wages and benefits, union recognition and union security are the most frequent causes of work stoppages in public employment. Bok and Dunlop, Labor and the American Community (New York, 1970), p. 321.

With the Moscone measure thus disposed of, public employees in California are hopeful that a second measure now pending in the legislature will give them the right to organize in a manner not now accorded by existing legislation.

The purpose of this section is to explore the existing legislative framework for public sector collective bargaining in the state and then examine both the pending Moretti proposal and the recently vetoed Moscone Bill.

The George Brown Act

In 1961, the first comprehensive public employee relations act, the George Brown Act, was passed. This act covered all public employees in the state.¹ In 1965, the Winton Act separated out for coverage elementary and secondary public school employees, including those in community colleges.² In 1968, amendments were added to the 1961 Act to make it apply more particularly to local government employees. This version became known as the Meyers-Milias-Brown Act. In 1971, the original Brown Act was recodified as Sections 3525-36 of the Government Code and presently applies to employees of state colleges and universities and employees of the state. (The statute is reproduced in Appendix I.) At no time were state employees covered by the Winton Act provisions or the Meyers-Milias-Brown Act provisions, the latter now occupying Sections 3500-3611 of the Code.³ As we shall see, this uneven coverage coupled with conflicting interpretations of the provisions is a potent reason for adopting a new public employee relations law.⁴

¹ Cal. Government Code #3500-11 (West, 1966); as amended (Supp. 72).

² Cal. Educ. Code #13080-13090 (West, 1966), as amended (Supp. 72).

³ See the discussion by Joseph R. Grodin, "Public Employee Bargaining in California: The Meyers-Milias-Brown Act in the Courts" Vol. 23, Hastings Law Journal, March, 1972, p. 719 ff.

⁴ See Final Report of the Assembly Advisory Council on Public Employee Relations (Known alternately as the Aaron Commission and the Moretti Commission; hereafter cited as Aaron Commission), March 15, 1973, pp. 28 ff.

The purpose of the George Brown act is stated in Section 3525:

It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations between the State of California and its employees by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice and be represented by such organizations in their employment relationships with the state. Nothing contained herein shall be deemed to supersede the provisions of existing state law which establish and regulate a merit or civil service system or which provide for other methods of administering employer-employee relations. This chapter is intended, instead, to strengthen merit, civil service and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between employees and the state.

Writing in the Hastings Law Journal in 1972, Joseph R. Grodin concludes that this statute "gave public employees little more than the right to join or not to join employee organizations, and the right of employee organizations to be heard on employment matters affecting their members."⁵

While the Brown Act covers state employees, there was initially some question as to its applicability to employees of the University of California. In 1958 the California First District Court of Appeals stated in Newmarker v. Regents of the University of California that

. . . common sense and the weight of authority indicate that the Board of Regents is a public legal entity charged with the government of a public trust.⁶

⁵Grodin, op. cit., p. 719.

⁶Newmarker v. Regents of the University of California, 160 C.2d 640, 325 P.2d 558, 562 (1958).

In this case, trade employees of the University had argued that the University of California at Berkeley was a private corporation and thus they had the right to strike. The Court decided to the contrary.

The Attorney-General of California in rendering an advisory opinion on the subject noted that Article 9, Section 9 of the California Constitution provides that the Board of Regents shall have "full powers of organization and government, subject only to such legislative control as may be necessary to insure compliance with terms of the endowment of the University and the security of its funds." Relying on Tolman v. Underhill, 39 C.2d 708, which held that the state legislative power could extend "over regulations made by the regents with regard to matters which are not exclusively university affairs,"⁷ the Attorney-General concluded that the employees' right to organize, be represented and confer on wages, hours, and conditions of employment "are neither exclusively the concern of the University nor do they limit or control the regents in their authority to govern."⁸ The distinction between internal University affairs and those which affect the University indirectly raise questions as to whether it would be possible to write the powers of the Academic Senate, now delegated by the Regents to the Senate, into a contract under a new collective bargaining law. As we shall see in a later section of this paper, some organizations favor doing so as a means of legitimizing the powers of the Senate.

⁷ Tolman v. Underhill, 39 C.2d 708, 249 P.2d 280, 282 (1952).

⁸ 39 Ops. Atty. Gen. 182, 184 (1962).

The Brown Act in Section 3527 stipulates that state employees presently have the right to join an employee organization, but unlike provision 3507(d) of the Meyers-Miliias-Brown Act, there is no provision made for an organization to seek to become the exclusive representative.

The scope of bargaining under Brown is large; Section 3529 stipulates that the scope of representation "shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment." However, the Act doesn't establish bilateral determination of these issues. Section 3530 stipulates that state employers

shall meet and confer with representatives of employee organizations upon request, and shall consider fully as such representatives deem reasonable such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action. (underlining added)

In construing similar language in the Winton Act,⁹ the California Court of Appeals (Fourth District) said in a 1972 opinion,

Its provisions make clear that the right conferred upon certificated public school employees is to voice their views and ideas through organized representatives and to have these views and ideas considered by the public school employer but that all final decisions are left to the public school employer.¹⁰

⁹Cal. Educ. Code #13085 (West, 1966), as amended (Supp. 72).

¹⁰Westminster School District of Orange City v. Superior Court, 28 Cal. App. 3d 76, 104 Cal. Rptr. 388, 393 (1972).

The language in Meyers-Milias-Brown provides that after meeting and conferring, parties are to reduce employment agreements to writing.¹¹

The Court of Appeals (First District) ruled in 1970 that these agreements are binding and suggested that a similar reading applies to the Brown Act:

We think that . . . the modern view of statutory provisions similar to the Brown Act is that when a public employer engages in such meetings with the representatives of the public employee organization, any agreement that the public agency is authorized to make and, in fact, does enter into, should be held as valid and binding as to all parties.¹²

Professional employees under the Brown Act may "separate out" from non-professional employees. However, Section 3533, which contains this language, so broadly defines "professional employees" that there is little difference between those who are classified as "professional" and those who are not.

Finally, the Brown Act contains no right to strike and expressly exempts state employees from coverage by Labor Code Section 923, which gives the right of collective bargaining to private employees. The Meyers-Milias-Brown amendments were construed in Almond v. County of Sacramento (1969) as not changing the implied no right to strike as far as local government employees were concerned.

¹¹Cal. Government Code #3505.1 (West, 1966), as amended (Supp. 72).

¹²East Bay Municipal Employees Union Local 390 v. County of Alameda, 3 Cal. App.3d 578, 83 Cal.Rptr. 503, 508 (1970).

Our analysis of both the pre-1968 and the 1968 acts . . . compels us to, and we do, hold that the legislature has not declared the right . . . to strike.¹³

This position has been most recently reaffirmed in a definitive statement by the California First District Court of Appeals in Trustees of California State Colleges v. Local 1353, San Francisco State College Federation of Teachers (1970) involving a particularly bitter and disruptive strike at San Francisco State in 1969, at the height of student militancy.

We hold that California follows and applies the common law rule that public employees do not have the right to strike in the absence of a statutory grant thereof. . . .¹⁴

The Court also upheld a preliminary injunction against picketing by the striking teachers, since the picketing was in support of an unlawful strike and violence was present.

The George Brown Act, then, as it applies to the employees of the University of California at Berkeley (1) does not provide for exclusivity of representation by a bargaining agent, (2) does not establish bilateral determination of issues, (3) has a clearly unworkable definition of "professional employee," and (4) provides for no right to strike. These weaknesses, plus the general conflicting nature of the existing California public employee relations statutes, have contributed to a call for reform.

¹³Almond v. County of Sacramento, 276 Cal. App. 2d 32, 80 Cal. Rptr. 518, 522 (1969).

¹⁴Trustees of California State College v. Local 1352, S.F. State College Federation of Teachers, 14 Cal. App. 3d 863, 92 Cal. Rptr. 134, 136 (1970).

Proposed New Laws

The Legislature has yet to finalize action on the Moretti Bill, the product of a Commission established by House Speaker Bob Moretti. Because the future direction of state law is so crucial to the determination of how the issues of collective bargaining at Berkeley may be resolved, the remainder of this section of the paper will examine the Commission proposal in depth and will briefly contrast with it the now vetoed Moscone Bill.

The Aaron Commission Proposal

The Aaron Commission, so-called after its chairman, Benjamin Aaron, was named by Speaker Moretti acting pursuant to House Resolution 51 (June 22, 1972). The Resolution expressed concern over the increasing number of work disruptions each year by public employees and directed the Assembly to establish an Advisory Council on Public Employee Relations as an advisory agent to the General Research Committee.

The report of the Commission begins by urging repeal of existing legislation on the subject, including the George Brown Act, the Meyers-Milias-Brown Act, and the Winton Act.

Unavoidably, these disparate laws and policies have produced broad differences in the rights, obligations, and remedies of California public employees -- differences that are often contradictory and irreconcilable. This factor, undoubtedly, has contributed to the broad consensus among both employers and employee representatives who have testified at our public hearings and submitted written statements urging an all-encompassing, preemptive state law with a local option provision.¹⁶

During its hearings, some representatives from higher education in California spoke against extending coverage of such an act to state college and university academic employees. But the Commission was not persuaded.

There can be little doubt that, in widely varying degrees, college and university faculties in California and elsewhere participate in the governance of their respective institutions. Among the faculties themselves there are sharply divergent and conflicting estimates of the effectiveness of such participation. The existence of widespread dissatisfaction is indisputable; beyond making that observation, we think it inappropriate to comment.

¹⁵deleted

¹⁶ Aaron Commission, op. cit., pp. 28-29.

We are convinced, however, that there is nothing intrinsic in the teaching profession in institutions of higher learning that absolutely rules out collective bargaining as the alternative to present methods of faculty governance. Reasonable men can and do differ over the advisability of substituting collective bargaining for existing arrangements, and we express no opinion on that question. We do conclude, however, that the faculties of state colleges and universities should have the same rights and protections as other public employees in the State to decide for themselves whether they wish to organize and to engage in collective bargaining with their employers.¹⁷

The Moretti proposal, entitled "Collective Bargaining Act for Public Employment," has as its purpose "to prescribe rights and obligations of public employers and their employees, and to establish procedures governing relationships between them."¹⁸ Section 3500 of Article I of the proposed statute sets forth the policy of the State:

. . . to recognize the rights of employees of public employers to form, join and assist employee organizations, to bargain collectively through representation of their own choosing with public employers over matters within the scope of bargaining, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to establish procedures which will facilitate and encourage settlement of disputes.¹⁹

¹⁷Ibid., p. 39.

¹⁸Appendix A, Article I, Section 3500 of proposed statute "Collective Bargaining Act for Public Employment," Aaron Commission, op. cit. p. 2 (Appendix A).

¹⁹Ibid.

Section 3504(a) sets forth basic employee rights:

Employees shall have the right to form, join, or assist employee organizations, to participate in collective bargaining with employers over matters within the scope of bargaining through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. Employees shall also have the right to refrain from engaging in such activities, subject to an organizational security provision permissible under Section 3508.²⁰

Relying on the arguments in J. I. Case Co. v. NLRB, 321 U.S.

332, 338-39 (1944), the Aaron Commission provides in Section 3505(a) that "the employee organization selected . . . by the majority . . . shall be the exclusive representative of all the employees in the unit. . . ."²¹

Relying on the concerns of knowledgeable commentators over the proliferation of bargaining units, particularly in the public sector, the Commission states in 3506(a) that "the appropriate bargaining unit shall be the largest reasonable unit of employees of the employer. . . ."²² It directs its administering Board to take into consideration the following three criteria in making a unit determination:

1. The internal and occupational community of interest among the employees.

²⁰Article 4, Section 3504(a), ibid., p. 14.

²¹Article 5, Section 3505(a), ibid., p. 15.

²²Article 6, Section 3506(a), ibid., p. 19.

2. The effect the projected unit will have on collective bargaining relationships.
3. The effect of the proposed unit on the efficient operations of the agency and the compatibility of the unit with the responsibility of the agency and its employees to serve the public.²³

Realizing that a decision by its administering Board to include one entire class of employees -- "e.g., the faculty of the nine campuses of the University of California"²⁴ -- in a single bargaining unit might be controversial, the Commission includes in the proposed law the option of judicial review of bargaining unit determinations, with the consent of the Board.²⁵

As indicated above, the professional - non-professional distinction made by the Brown Act has not been highly regarded. Echoing this criticism, the Aaron Commission leaves the entire issue for Board resolution, noting in the Act that "there shall be a presumption that professional employees and non-professional employees should not be included in the same bargaining unit;" then adding the caveat that "the presumption shall be rebuttable."²⁶

²³Article 6, Section 3506(b), ibid., pp. 19-20.

²⁴Aaron Commission, op. cit., p. 57.

²⁵Article 3, Section 3503(a), ibid., p. 13 (Appendix A).

²⁶Article 6, Section 3506(c), ibid., p. 20.

The proposed statute makes the issue of organizational security a mandatory subject of bargaining.²⁷ In coming to this conclusion, the Commission comments that

. . . organizational security . . . is a legitimate objective of an organization representing a majority of employees in an appropriate union for purposes of collective bargaining. At the same time, we recognize that organizational security may not be appropriate under certain kinds of circumstances, and for that reason we do not favor making any form of organizational security a statutory requirement. Instead, we believe that the subject should simply be included among those terms and conditions of employment about which the parties to a collective agreement are required to bargain in good faith.²⁸

On the scope of bargaining, the proposed statute stipulates "wages, hours, and other terms and conditions of employment, including any other matters agreed to by the parties as a subject of bargaining."²⁹ No reservations are included; the Commission was not persuaded that a management-rights clause should be inserted.³⁰ Section 3513(b) provides that

Provisions of agreements between employers and employee organizations on matters within the scope of bargaining that are adopted by the legislative body of the employer shall, in the event of conflict, prevail over state or local statutes or charter provisions, ordinances, resolutions, or regulations of an employer or its agent, including a civil service commission or a personnel board.³¹

²⁷ Article 8, Section 3508.

²⁸ Aaron Commission, *op. cit.*, p. 264.

²⁹ Article I, Section 3501(w), *ibid.*, p. 7 (Appendix A).

³⁰ Aaron Commission, *op. cit.*, p. 139.

³¹ Article 13, Section 3513(b), p. 33 (Appendix A).

Articles 10-12 of the proposal pertain to the settlement of grievance and interests disputes. These provisions encourage voluntary arbitration in both instances. The Commission strongly supports the principle of voluntarism and agrees that employers and employees "should be free to agree to any form of imposed settlement which they find mutually acceptable -- arbitration, including final-offer-selector arbitration, or some other procedure."³² Should there be no arbitration or other means of settlement, employees have the right to strike, subject, however, to an involved statutory prescription for the resolution of impasses arising out of interests disputes.³³

The Aaron Commission proposal is to be administered by a Public Employee Relation Board (PERB), composed of three persons broadly representative of the public. The Board would have a wide range of powers of implementation under the act.³⁴

From a number of standpoints, the statute proposed by the Aaron Commission is a decided improvement over the Brown Act. But several of its provisions, particularly those over unit determination,

³²Aaron Commission, op. cit., p. 225.

³³Articles 11 and 12, ibid., pp. 25-32 (Appendix A).

³⁴Article 2, Section 3502, ibid., pp. 8-13.

exclusivity, and professional employees, are disturbing to those in higher education who approve of a collective bargaining law covering public sector academicians.

In April, 1973, the recommendations of the Aaron Commission were introduced as the Moretti Bill (AB 1243) into the Assembly with virtually no changes on provisions. It has been the target of several important interest groups who have urged significant modifications, particularly in the language dealing with unit determination. To date, several changes have been made favorable to these groups both by the Assembly and by the Senate, where the bill is now pending. This point will be discussed in some detail as it relates to the University of California later in the paper.

The Moscone Bill

In contrast to the statute proposed by the Aaron Commission, the Moscone Bill applied only to public education employees. It thus would have repeal only the Winton Act and would have peeled off higher education employees from the George Brown Act. The Moscone Bill (SB 400) introduced into the Senate by Senator Moscone on March 7, 1973, at the request of the California Federation of Teachers (CTA) and the California Labor Federation (AFL-CIO), had the support of a number of groups, including the University Council - AFT representing academic employees in the University System (these groups are described in detail in the third section of this paper).³⁵

³⁵

University Guardian, March, 1973 (newspaper of the UC-AFT).

Under Article I, Section 13091(b) of the original proposal, the term "Board of Education" was construed to apply to public higher education in the state:

"Board of Education means any board, body, committee, commission, or agency authorized to govern and manage a public educational system or institution, or a school,

college, university or other educational enterprise which is either tax-supported or operated under contract with a board of education and any person acting as a representative thereof. . . .³⁶
(underlining added)

The proposal set forth the policy of the state as follows:

It is . . . the policy of this state to recognize the rights of employees of boards of education to form, join and assist employee organizations, to confer, consult and negotiate with boards of education over such matters through representatives of their own choosing, to engage in other activities, individually or in concert, for the purpose of establishing, maintaining, protecting and improving terms and conditions of service and other matters which affect their working environment and to establish procedures which will facilitate and encourage amicable settlement of disputes.³⁷

Basic employee rights were broadly defined, in the original measure, as they are in the Aaron Commission proposal. The Moscone Bill provided for exclusivity of the bargaining unit selected in accord with the appropriate provisions of the bill. And, like the Aaron Commission statute, the Moscone proposal as

³⁶Senate Bill 400, article 6, Section 13091(b).

³⁷Ibid., Article 6, Section 13090.

introduced favored large bargaining units. It would appear from its original wording on this matter that the appropriate unit for the University of California would include all academic employees, numbering some 21,000.

In each case where the appropriateness of the claimed unit is in issue, the commission shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employees' organization; provided, that a unit of classroom teachers shall not be appropriate unless it includes all such teachers employed by the board of education; and provided further that classified employees and certificated or academic employees shall not be included in the same negotiating unit.³⁸
(underlining added)

The words "academic employees" appear to apply to both tenured teaching faculty and those who are not tenured and also not teaching, e.g., those engaged in research, library work, etc. The Assembly added an amendment in August defining academic employees as "any employee engaged either (1) primarily in instruction... or (2) in very closely related professional activities including but not necessarily limited to, professional librarians, professional counselors, and department chairmen..."³⁹ Since the Board of Regents employs the academic personnel for all nine campuses, it would seem that the appropriate unit would include all such employees. Proponents of having the University of California exempted from this language, however, were successful in getting the Legislature to insert the words "except at the

³⁸ Ibid., Article 6, Section 13094(f).

³⁹ Assembly Daily Journal, August 16, 1973, p. 6552.

University of California" just prior to the sentence underlined above. This had the effect of holding the University only to the community of interest standard stated at the beginning of the passage.^{39a}

As we shall see, questions of the geographic scope and composition of the bargaining unit are hotly debated by opposing groups at the University of California. And for good reason, since it is a central conclusion of this paper that the resolution of this issue will have significant and important consequences for the future of the University of California at Berkeley, and by implication, the other eight campuses of the system.

Like the Aaron Commission proposal, the scope of bargaining was broadly worded to include "terms and conditions of service and other matters which affect the working environment of employees..."⁴⁰ There were no reservations on the scope of bargaining.

The settlement of interests disputes after impasse includes a process of mediation and later fact-finding as mandated by the commission, but after the findings of a fact-finding panel are released to each party and to the public, no provision was made for the next step.⁴¹ Thus, in the original bill the question was left open as to whether employees have the right to strike.⁴² However, before SB 400 was reported out the Senate and sent to the

^{39a}Ibid.

⁴⁰ Senate Bill 400, Article 6, Section 13091(f).

⁴¹Ibid., Article 6, Section 13095.

⁴²Bottone interview.

Assembly on June 26th,⁴³ the wording on basic employee rights (see page 17 above) was altered by deletion of the phrase "to engage in other activities, individually, or in concert," thus removing any overt attempt to convey a right to strike to education employees.⁴⁴

Finally, the Moscone proposal set up a three-member administering agency entitled the Education Employer-Employee Relations Commission, broadly representing the public and possessing a wide range of powers to affectuate the act.

Figure I compares the key features of the existing George Brown Act and the Moretti and Moscone proposals.

Figure I

	George Brown Act	Moretti Bill	Moscone Bill
Coverage	Public Employees of State	All Public Employees	Public Education Employees
Exclusivity of Bargaining Agent	No	Yes	Yes
Size of Unit	No Preference	Large	Large
Scope of Bargaining	Broadly stated	Broadly stated	Broadly stated
Bilateral Determination of Issues	No	Yes	Yes
Right to strike	No	Yes	No
Administering Agency	No	Yes	Yes

⁴³ Senate Weekly History, Friday, June 29, 1973, p. 133.

⁴⁴ Senate Daily Journal, March 22, 1973, p. 1817.

Before sending the Moscone Bill back in September to the Senate for its concurrence, the Assembly made several significant changes in addition to the exemption granted the University of California from the language on unit determination. Some of these changes will be discussed later in the paper. On September 12, the Senate concurred in the amendments added by the Assembly and sent the proposal on to the Governor by a vote of 21-17.⁴⁵ The Governor then vetoed the measure. There is some discussion that Speaker Moretti may try to override the Governor's veto when the Legislature convenes in January 1974, but few observers expect him to be successful. Consequently, attention has now shifted to the Moretti Bill which passed the Assembly and was sent on to the Senate on August 31st by a vote of 42-30.⁴⁶ Several important changes have been made to date in its language as will be discussed below, and others are contemplated when the Senate takes up the measure in January. As long as Ronald Reagan is governor, however, the bill, if reported out of the Legislature, will likely meet with no more success than the Moscone measure, since Reagan does not favor extending collective bargaining to the public sector.⁴⁷

However, judging by the pressure behind such a measure in

⁴⁵Senate Weekly History, Sept. 14, 1973, p. 164.

⁴⁶Assembly Weekly History, Sept. 14, 1973, p. 543.

⁴⁷Comments by Senator Mervyn Dymally delivered at the AAUP California Conference Annual Meeting, April 7, 1973.

California and by the trend in other states*, it appears inevitable that the California legislature will enact a new public employee collective bargaining law within the next five years. Partly for this reason and partly for a variety of other concerns, there is growing interest and concern about collective bargaining at the University of California at Berkeley.

*Since 1959 when Wisconsin passed the first comprehensive public employee collective bargaining law, more than two-thirds of the states have enacted such measures. Four states -- Alaska, Hawaii, Pennsylvania, and Vermont -- allow public employees the right to strike. See Final Report of the Assembly Advisory Council on Public Employee Relations (Aaron Commission), March, 1973, pp. 25 ff and 197 ff.

CAUSES FOR ORGANIZING

While talk of a new collective bargaining law is itself a catalyst to unionization, the growing interest in collective action of some type at Berkeley also has its roots both in the worsening plight of higher education today and in concerns directly related to the Berkeley campus.

Indirect Causes

The indirect causes include the so-called "new depression" in higher education, the philosophy of the Reagan administration toward the University System, and the success of unionism elsewhere.

The "New Depression"

According to a recent study by the Committee for Economic Development, higher education costs will double by 1980.¹ (See Table 1 and 2 for college cost increases from 1959-1969 and projected to 1980 in 1969-70 dollars and inflated dollars.) While a national enrollment increase from 9.2 million this year to a projected 11.4 million* by the end of the decade will create additional revenue, a widening gap between income and expenses is expected to occur -- a gap many institutions are already experiencing. In 1971, the American Council on Education reported that 60% of all private four-year colleges and universities had

¹"The Management and Financing of Colleges", Committee for Economic Development, January, 1973.

*This figure is 1.5 million less than originally projected by the Carnegie Commission. Commission Chairman Clark Kerr attributes the present downward revision to a leveling off of the number of high school graduates, expected sharp reduction in birth rates, and decreases in college and university enrollment in 1971 and 1972. San Francisco Sunday Examiner, Section A, p. 7., Sept. 23, 1973.

operating deficits.² In his 1971 monograph for the Carnegie Commission, Earl Cheit lists the University of California at Berkeley as one of eleven institutions out of his sample of 41 judged to be "in financial trouble." (See appendix 2 for the observations of Cheit's Berkeley interviewer.)³ In a follow-up study recently released, Cheit notes that most of the 41 schools "seem to have achieved a stabilized financial situation," though he does not include Berkeley in this group. Berkeley's financial status now and predicted to 1976, according to Cheit, has and will continue to deteriorate. Even those schools which he considers having achieved an economically stabilized status cannot continue their "fragile stability" into the future without an expenditure-income relationship improvement. Most of the improvement over two years ago, notes Cheit, has come from dramatic and in some cases, drastic, cost-cutting.^{3a}

²

Ibid.

³ Earl Cheit, The New Depression in Higher Education, (Carnegie Commission: Berkeley, Calif., 1971). Cheit is a professor of Business Administration at UC-Berkeley.

^{3a} Earl Cheit, The New Depression in Higher Education -- Two Years Later, (Carnegie Commission: Berkeley, Calif., 1973).

Table 1

Real Increases in College Costs and Median Family Incomes,
1959 to 1969

	1959	1969	Percent Increase
Tuition and Required Fees, in 1969-70 dollars			
Public 2-year	\$95	\$188	98%
Public 4-year	205	310	51
Public university	307	412	34
Private 4-year	941	1471	56
Private university	1210	1795	48
Tuition Fees, Room, and Board Costs in 1969-70 dollars			
Public 2-year	\$711	\$957	35%
Public 4-year	942	1147	22
Public university	1144	1342	17
Private 4-year	1837	2435	33
Private university	2214	2905	31
Median Family Income in 1969 Prices	\$6808	\$9433	39%
Consumer Price Deflator (1959=100)	\$100	\$121.9	22%

Tuition, Fees, Room, and Board costs taken from National Center for Educational Statistics, Projections of Educational Statistics to 1979-80, Washington, D. C., 1970, pp. 106-07.

More recent data as suggested in the text, indicate that the 1969 figures may be low.

Median family incomes and consumer price deflators taken from Economic Report of the President, 1971, Washington, D. C., 1971, pp. 200 and 220.

From D. Bruce Johnston, "The Role of Loans in the Financing of Higher Education," May, 1972 (The Ford Foundation).

Table 2

From D. Bruce Johnston, "The Role of Loans in the Financing of Higher Education", May 1972, (The Ford Foundation)

The Cost of College to the Student and/or Family
1969-70 and Estimated to 1979-80 in
Constant and Current Dollars

	1969-70				1979-80 (1969-70 dollars)				1979-80 current dollar estimates with high, medium, and low estimates of yearly inflation		
	Tuition & Fees	Room & Board	Other	Total	Tuition & Fees	Room & Board	Other	Total	3% Total	4% Total	5% Total
Public, 2-year, commuter	\$ 188	\$ 400	\$ 799	\$1387	\$ 267	\$ 400	\$ 799	\$1466	\$1970	\$2170	\$2388
Public, university, commuter	412	400	774	1595	546	400	774	1720	2312	2546	2802
Public, 4 year, residential	310	837	691	1838	425	955	691	2071	2783	3066	3373
Private, 4 year, residential	1471	964	619	3254	2033	1085	819	3937	5291	5828	6413
Private, university, residential	1795	1110	819	3724	2396	1255	819	4470	6007	6523	7281

Tuition and fees, and room and board estimates for 1969-70 and constant dollar projections to 1979-80 were taken from Projections of Educational Statistics to 1979-80, National Center for Educational Statistics, U. S. Office of Education, Washington, D. C., 1971, Table 49, pp. 105-108. "Room and board" costs for commuters were estimated at \$400 (nine months). U.S.O.E. estimated constant dollar annual tuition increases of about 2% for public institutions and 3% for private institutions over the 1970's. U.S.O.E. projected constant dollar yearly increases in room and board of about 1-1.5% for the 1970's.

"Other" costs were taken from Elizabeth W. Haven and Dwight H. Horch, How College Students Finance Their Education: National Survey of the Educational Interests, Aspirations, and Finances of College Sophomores in 1969-70, Princeton, 1971. "Other" costs in table 1 also include books and supplies, estimated at \$150 for public 2-year institutions and \$200 for all others, based upon the current \$150-\$200 estimate used by the College Scholarship Service. Other cost, and room and board for commuting students, were estimated to remain constant in 1969-70 dollars over the 1970's.

Solutions to the financial crisis in both public and private sectors center on a dramatic increase in government spending for higher education and an increase in student tuition. But with government already contributing the equivalent of 60% of all college income (about \$12 billion),⁴ coupled with the escalation of competing claims for government funds and a decline in education as a priority expenditure, the future looks bleak for any proportional increase in state and federal monies. While increasing student tuition commands great interest, particularly in the public sector, most academicians and politically-sensitive legislators are worried about pricing many students out of higher education. At Berkeley virtually all faculty groups including the Berkeley Division of the Academic Senate have joined the UC Student Lobby in urging repeal of the present \$600 per year in-state tuition charge (\$2400 for out-of-state students) instituted at Governor Reagan's request in 1969-70.

Complicating the bleak picture are long range reports on a declining birth rate, tight job markets and a glut of Ph.D.s. While enrollment as noted above is expected to increase moderately in the 1970's, it is predicted to level off and begin declining slightly in the '80's. Contributing to the declining enrollment is the growing difficulty college graduates are having getting jobs. The unemployment rate for recent college graduates has been greater than for the total work force.⁵ By 1980

⁴Higher Education: Who Pays? Who Benefits? Who Should Pay? (Carnegie Commission: Berkeley, Calif., June 1973), p. 30.

⁵"The Job Gap for College Graduates in the '70's," Business Week, September 23, 1972.

the surplus of college graduates, including those without jobs and those working at jobs below their educational levels, could reach 1.5 million.⁶ Dr. Kenneth E. Eble, professor of English at the University of Utah, recently noted in The Chronicle of Higher Education that "most graduate students, particularly Ph.D.'s, become teachers. Without a great increase in undergraduate enrollments, the demand for new college teachers will drop sharply. Using very low figures (45,000) for doctorates produced in 1980, only one in four will be needed for college teaching."⁷ What will the other 75% do? That question remains unanswered.

The Reagan Administration

Nor has the philosophy of the Reagan administration toward higher education added to the sense of security of the University of California employee. Generally suspicious of academicians and distrustful of an institution which could find itself nearly paralyzed by student activism, Governor Reagan has indicated his displeasure in several ways. Beginning in 1966, the UC System began to experience severe budget cut-backs.

In the four academic years between 1966-67 and 1969-70, University of California operating budget requests were cut an average of 8-1/2 percent a year from needs projected to support an enrollment increase of 20 percent. In 1970, the Governor (succeeded) in cutting the University's budget request 12 percent, keeping its operating budget at the same level as the previous year, despite a 6 percent rise in the consumer price index and a 5 percent rise in expected enrollment.⁸

⁶Ibid.

⁷The Chronicle of Higher Education, July 16, 1973.

⁸Cheit, The New Depression in Higher Education, op. cit., p. 16.

At the same time, Reagan strengthened the Coordinating Council for Higher Education (CCHE), set up in 1969 by the Donahue Act, which established the California Master Plan for higher education. CCHE, an 11-member board theoretically to oversee and coordinate the activities of the 24 member UC Board of Regents, the 21-member State College Board, and to a lesser extent, the 15-member Community College Board, had generally played a minor role prior to the Reagan Administration. Through his CCHE appointees, the Governor saw to it that CCHE took seriously its charge to review the annual budgets of the University and State Colleges, advise him and the legislature of functions appropriate to each level, and develop plans for orderly growth. The University Council - American Federation of Teachers (UC-AFT) charges that

(t)hrough these business appointees, Reagan has turned the CCHE into an arm of the State Department of Finance, specifically to implement the governor's budgetary and educational policies in the University and State Colleges. . . . Time and again the University has learned that the CCHE is unmoved by considerations of educational policy or the quality or instruction. Its sole interest is in finding ways of reducing costs.⁹

Recently Governor Reagan signed a bill which will replace the Coordinating Council next year with a new agency. Called the California Postsecondary Education Commission, it is expected to have considerably more influence with the state legislature.

Governor Reagan's successful bid to impose tuition charges

9

University Guardian, publication of the University Council - American Federation of Teachers (UC-AFT), March, 1972.

in the UC System led to a decline in expected enrollment increase, resulting in UC President Charles Hitch's call in February, 1972, for the implementation of tuition charges in the state colleges to offset UC's competitive disadvantage.¹⁰

President Hitch himself has not been unaware of the economic problems facing the UC System. In his annual budget proposal to the UC regents submitted in September of this year, Hitch called for limiting the growth of most campuses in the system, leaving only Berkely and UCLA as large institutions.^{10a} Hitch's plans signify, according to newspaper accounts, an end to "annual budget battles between the offices of Governor Reagan and President Hitch,"^{10b} since Reagan's staff has proposed similar cutback plans in the past. Presumably some of the criticism which has up to now been leveled against the Reagan Administration will at this time also include President Hitch and his staff.

¹⁰
Ibid.

^{10a}
San Francisco Sunday Examiner, September 23, 1973.

^{10b}
Ibid.

Success of Unionism Elsewhere

At the same time that these general concerns plague the UC System, there is also interest among many California academicians in the growing success of unionism elsewhere.

Since the first extensive collective bargaining contract resulting from a bilateral determination of issues was signed in September of 1969 at the City University of New York, the growth of collective bargaining in higher education has been, in the words of Aaron Commission member Donald Wollett, "simply astonishing."^{10c}

In 1970 the National Labor Relations Board (NLRB) extended its jurisdiction to private colleges and universities, thus giving these faculty members the protections of the National Labor Relations Act. Many public institutions like those in New York have secured the right to organize under revised state laws. Last spring, The Chronicle of Higher Education listed 286 institutions where the faculty had taken advantage of these opportunities to elect bargaining agents.¹¹ (See appendix 2 for a list of these institutions and their bargaining agents). These institutions represent over 10 percent of the nation's 900,000 academic employees. Included among the four year and graduate schools are several large state systems covered by comprehensive collective bargaining laws allowing bilateral determination

^{10c} Presentation by Donald Wollett, UC-Davis law professor and member of the Aaron Commission, to a law class at Stanford University, May 3, 1973.

¹¹ The Chronicle of Higher Education, April 30, 1973.

of issues. Specific examples are the State University of New York representing 26 institutions, the City University of New York representing 19 institutions, the Pennsylvania State College and University System representing 14 institutions, and the University of Hawaii System composed of 8 campuses.

In the same issue of The Chronicle, it was reported that five of the top ten institutions paying the highest faculty salaries were in the City University of New York (CUNY), where NEA and AFT affiliates, with the blessings of the revised Taylor Law, had recently united to form a system-wide bargaining unit of 16,000 academicians.¹²

This fall the Chronicle reported that union organizers are making extensive plans to organize faculties at public institutions in eight states. Collective bargaining elections are also scheduled at a number of private institutions this year.^{12a}

There is a widening realization at Berkeley that eventually the right to organize will come to California higher education. Some UC faculty members believe the time to begin preparations for the inevitable is now.

Direct Causes

Those who seek to convince UC System academicians of the advisability of organizing now are aided by direct and current

¹² Ibid.

^{12a} The Chronicle of Higher Education, September 21, 1973.

faculty concern over salaries and benefits, a demand for greater productivity, growing centralization of policy making, and particularly by threatened job security.

Salaries and Benefits

From July 1, 1969 to July 1, 1972 faculty in the UC System experienced a 9% salary increase (on top of a yearly 2% merit increase).¹³ During the same time period, the Consumer Price Index increased by 16.3%.¹⁴ A special subcommittee report to the Berkeley Senate Division showed that Berkeley had 101.5% of the average salary of eight comparable institutions in 1965-66, but that this ratio slipped to 91.5% in 1971-72.¹⁵ Fringe benefits went from 67.5% of those at the other institutions in 1965-66 to 83.4% in 1968-69 but declined to 65.3% in 1971-72.¹⁶ According to Earl Cheit,

A (California) legislative spokesman announced that the reason for the action was "disciplinary": The faculty had failed in its responsibilities to hold students to an approved path of conduct during the upheaval on campuses following the invasion of Cambodia in May, 1970. The legislative spokesman did not say that if the faculty were paid less they and the students would behave better, but the legislature apparently assumed that a good lesson in poverty amounts to a good lesson in morality.¹⁷

¹³ University Guardian, November, 1972.

¹⁴ Ibid.

¹⁵ Contained in the report of the Special Subcommittee on Faculty Organization to the Committee on Senate Policy. This report was released to members of the Representative Assembly of the Berkeley Senate Division on March 20, 1972. (Hereafter to be cited as Faculty Report.)

¹⁶ Ibid.

¹⁷ Cheit, The New Depression in Higher Education, op. cit., p. 17.

While the Governor and the legislature softened their hostility toward the UC faculty in 1972-73 with an 11% salary increase (including merit pay), it would reportedly take 3% more than the 5.4% the Governor has approved for this year to equal the buying power of the 1969 salary levels.¹⁸ And with inflation rates at an all-time high, the 4.7% academic staff pay raise now being discussed by President Hitch's staff for 1974-75 will almost certainly fall short of improving the buying power of the faculty salaries.^{18a}

Faculty Productivity

A second direct concern of the Berkeley faculty is the pressure from Sacramento for greater faculty productivity. From 1966-67 to the present, the student-teacher ratio has increased from 14:1 to 17.4:1, an increase of 21-1/2% in the UC System.¹⁹ The Governor and the legislature have also been successful in mandating a minimum of 9 weekly classroom hours per faculty member. The Policy, Academic Planning, and Educational Policy Committees of the Berkeley Senate Division have rejected this figure as an adequate measure of productivity at a major research and graduate institution like Berkeley. In response, these committees prepared a paper entitled "Report on Faculty Time and Resources."

This Report established that any budgetary statement which increased classroom hours per faculty member would have

¹⁸ Bottone interview. Recently, the American Federation of Teachers at the University of California has charged that administrative salaries at the University increased by 8 to 11 percent in 1973, compared to the 5.4 percent for the faculty. Over the past two years, administrative increases have ranged, say the UC-AFT, from 20 to 50 percent. The Chronicle of Higher Education, October 29, 1973.

^{18a} University Guardian, October, 1973.

¹⁹ Bottone interview.

to be matched by decline in the quality of services offered by the University. This is especially true since the student-faculty ratio at Berkeley is higher than at any other university, while the quality of graduate education on this campus ranks exceptionally high according to numerous studies.²⁰

Centralization of Policy-Making

Perhaps of greatest concern to the nine campuses of the UC System is the growing centralization of policy-making both in President Hitch's office and in Sacramento. In its 1972 report to the Representative Assembly of the Berkeley Senate Division, the Special Subcommittee on Faculty Organization noted that

. . . with the abrupt cessation of institutional growth and the onset of extremely severe budgetary stringency, the administration of University resources has become more centralized; and this has entailed a corresponding decline in faculty consultation on various questions of basic importance to educational policy.²¹

Of particular concern in the recent past has been the heightened activity of the Coordination Council on Higher Education. In 1967, the California Assembly passed Resolution 376 directing CCHE

to undertake a study of . . . highly expensive, specialized, limited-use academic programs and facilities . . . with the objective of concentrating such programs and facilities at strategic locations in these state educational systems and thereby effecting a reduction in total state expense therefor.²²

In 1971, CCHE issued a report entitled "An Analysis of Foreign Languages in California Public Higher Education," one of a series of studies done pursuant to Resolution 376. In this report, CCHE recommended a cut-back in various high-cost, low yield language instructional programs in the UC System. The Berkeley Senate Division Committee on Education Policy, hearing that the UC academic Senate committees

²⁰ Faculty Report, op. cit.

²¹ Ibid.

²² University Guardian, May, 1972.

were not consulted because of issues of confidentiality, issued this stinging commentary:

It is evident that the independence, autonomy, and integrity of the University are being steadily encroached by the CCHE. The constitutional authority of the Regents is bypassed, the Administration is coerced, and the delegated rights, privileges and responsibilities of the Academic Senate are abrogated.²³

In an editorial in its University Guardian, the UC-AFT condemned the CCHE approach to educational decision-making as "a management study of assembly line operation."²⁴ CCHE reports, according to the editorial, "are devoid of any concern for educational policy or academic standards."

Further, centralization of educational policy-making is assured with establishment next year of the Postsecondary Education Commission, broadly representative of the state's private and public higher educational institutions. With 12 of the 23 members appointed by the three branches of state government and with private institutions including trade schools also represented, the future may well see diminished state support for the UC System.

Threatened Job Security

A fourth direct concern to the Berkeley faculty is that of threatened job security. Junior, non-tenured faculty are particularly distressed with reports concerning funding cut-backs.

²³ Report of the Committee on Educational Policy, Representative Assembly, Berkeley Senate Division, January 24, 1972.

²⁴ University Guardian, March, 1972.

Since July, 1970 the UC administration has studied changes in Section 52 of the Administrative Manual dealing with retention, promotion, and tenure of junior faculty. According to Berkeley Chancellor Albert Bowker, Section 52 has now been altered to make it easier for non-reappointment of assistant professors in the face of financial stringency.²⁵ Even tenured professors at Berkeley and elsewhere are concerned about the effect of rumored cut-backs in such fields as Education, Public Health, and Agriculture.²⁷ President Hitch's recent call for limiting growth at most UC campuses and establishing better rapport with planners in Sacramento has added to the concern.

The result of the transition from a growth to a no-growth status also has an impact on internal faculty relations, as Joseph Garbarino points out:

As the rate of growth of faculties slows down, the system of faculty personnel administration will produce imbalances in the age, rank, and discipline composition of the existing faculties that will create pressures for change, threatening the position of the incumbents.²⁸

These factors, both indirect and direct, have resulted in the creation of several formalized groups at Berkeley seeking to organize the faculty to collective action in anticipation of a change in state law.

²⁵ Bowker interview.

²⁶ deleted.

²⁷ University Guardian, March, 1973.

²⁸ Joseph Garbarino, "Precarious Professors: New Patterns of Representation", Industrial Relations, vol. 10, 1971, p. 4.

While all these organizations claim to have the best interests of the faculty at heart, they, like the academicians they hope to represent, differ dramatically in their approaches to unionization.

(Pages 38 and 39 have been deleted.)

THE COMPETING ORGANIZATIONS AT UCB

Until 1972 the AAUP waffled on the issue of faculty collective bargaining.¹ However, in October of that year the association adopted the following statement:

Collective bargaining, in offering a rational and equitable means of distributing resources and of providing recourse for an aggrieved individual, can buttress and complement the sound principles and practices of higher education which the American Association of University Professors has long supported. Where appropriate, therefore, the Association will pursue collective bargaining as a major additional way of realizing its goal in higher education, and it will provide assistance on a selective basis to interested local chapters.²

The California Conference of the AAUP, with a total membership of roughly 6,000, is seeking to coordinate efforts to prepare for a collective bargaining law in the state. The Conference is made up of four councils, three representing the respective levels of the state higher education system and a fourth representing private institutions. But, apathy, lack of funds, and lack of trained personnel have hindered efforts for overall coordination of the state and local affiliates.³

The AAUP local chapter at Berkeley is not directly involved in campus organizational efforts. Yet, it has urged its some 300 members to join the Senate Faculty Association.⁴ The Chairman of this latter body sees the possibility of a joint appearance with the AAUP on the ballot in any collective bargaining

¹ Myron Lieberman, "Professors Unite!" Harper's Magazine, October, 1971, p. 64.

² "Statement on Collective Bargaining," AAUP Policy Documents and Reports, 1973 Edition (hereafter cited as AAUP Policy Reports), p. 52.

³ Seaver interview.

⁴ Telephone conversation with Professor Jack Washburn, President of the Berkeley chapter of the AAUP.

election, or even a formal merger, should the Faculty Association become a permanent organization on the campus.⁵ In any case, it is clear that the Faculty Association's approach to collective action is patterned after the posture of the AAUP.

Faculty Association

The Faculty Association grew out of a special Berkeley Senate Division Subcommittee Report on Faculty Organization. The report recommended that the Senate Division postpone affiliation with any established organization and instead set up a separate entity to prepare for collective bargaining. This motion was approved by the Senate on May 30, 1972.⁶ The purpose of the Faculty Association as stated in the Provisional By-Laws is

. . . helping to further the well-organized professional and scholarly values held by the faculty, helping to protect traditional privileges and responsibilities reserved to the faculty for the purpose of maintaining and improving the academic quality of the campus, and helping to maintain and improve the economic status of the faculty.⁷

Its principle functions are:

a. It will inform, consult with, and represent faculty interests to all agencies whose decisions affect the faculty. It will gather and disseminate information to the faculty on issues before such agencies. This agencies include the legislative and executive branches of California's government, the Coordinating Council for

⁵Feller interview.

⁶ Minutes of the Berkeley Division Academic Senate, May 30, 1972.

⁷Article II, Section I "Purposes and Functions," Provisional By-Laws of the Faculty Association of the University of California at Berkeley. (Hereafter referred to as Provisional By-Laws).

Higher Education, the Board of Regents, and, when appropriate, the University-wide and campus administration.

b. It will encourage the development of, maintain contact with, coordinate its activities with, and form liasons with parallel or similar organizations on other campuses of the University of California

c. It will prepare for the eventuality of collective bargaining by continually informing itself and the faculty on all relevant issues. In its early phases it will monitor and attempt to influence any pending legislation that might be regarded as possibly authorizing collective bargaining on the part of public employees.⁸

Membership is limited to "individuals in all categories of faculty eligible for membership in the Berkeley Division (of the UC Senate), except those holding academic administrative positions above the rank of Chairman of the Department."⁹ Of the 5400 academic employees at Berkeley, some 1700 as members of the Senate are thus eligible for membership in the Faculty Association.

The University Council - American Federation of Teachers (AFT) challenged the right of the Senate to set up such an organization by complaining to the California legislature that the Berkeley Senate Division was trying to turn itself into a bargaining agent as the Senate in the State College system had done in 1969. The latter instance resulted in a threat of curtailing the State College's funding. In response to the AFT's latest challenge, Legislative Analyst Alan Post recommended that

⁸Article II, Section 2 (complete), Provisional By-Laws, Ibid.

⁹Article III, Section I, Provisional By-Laws, Ibid.

the funds for the Academic Senate of the University of California be line-itemed in the 1973-74 Budget Bill to permit monitoring any involvement by the Senate in collective bargaining.¹⁰ But later, in response to a letter by Faculty Association Provisional Chairman David Feller pointing out that the Faculty Association did not depend upon the Senate for funds and was set up as a completely separate entity, Post rescinded the recommendation.¹¹ The AFT, commented Feller, "was left with egg on its face."¹²

The Faculty Association was set up on a provisional basis: under the terms of the Senate motion, "If 400 members do not join before June 1, 1973, the interim Executive Board will dissolve itself and return the balance of the escrow fund derived from initiation fees to those who have paid them."¹³

In May, 1973, the Association met and surpassed the 400 member requirement.¹⁴ By the summer of 1973, the Faculty Association did not hesitate to point out that despite its self-imposed membership limitation, it had the largest number of dues-paying members

¹⁰ University Guardian, March, 1973.

¹¹ Feller interview.

¹² Ibid.

¹³ Minutes of the Berkeley Division Academic Senate, May 30, 1973.

¹⁴ Feller interview.

(presently some 450) of any organization of faculty on any single campus of the University of California. According to Professor Feller, the biggest obstacle to recruiting new members has been a general reluctance by professors to pay dues; at \$120 per year for a full professor (who is already contributing to the AAUP) there is much questioning by the faculty as to the value of such an organization at Berkeley.¹⁵ On the other hand, a big stimulus to joining the Faculty Association, according to Dr. Feller, is opposition to the type of bargaining unit proposed by the AFT.¹⁶

University Council -- American Federation of Teachers

In California public higher education, the AFT began in 1959 at San Francisco State as an outgrowth of opposition to interrogation of academicians by the House Un-American Activities Committee in San Francisco. By 1968, membership in 16 locals totalled 1800.¹⁷ The first local in the University System was organized at Berkeley in 1963 as an outgrowth of activist movements on the campus. (The AFT has tried to overcome this initial radical image in recent years.¹⁸) By 1969, locals were cropping up on other UC campuses. Early in December, 1969,

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ "Why We Need A Union," AFT flyer.

¹⁸ Bottone interview.

the AFT locals in the State Colleges and the University merged into the College and University Council with a combined membership of over 2000.¹⁹ This unit then merged with the Association of California State College Professors (ACSUP) to form the United Professors of California - AFT. On June 19, 1971, the AFT locals in the University System voted to withdraw from the United Professors of California - AFT to form the University Council - AFT so as to better organize the University System.²⁰ The flagship local at Berkeley was joined in 1971 by the University Federation of Librarians, Locals 1795.²¹

The University Council - AFT Berkeley local, like the other locals throughout the state system, applies trade unionism to the University.

The essentials (of trade unionism) we think are appropriate to the academic situation (are) the right to join unions and the obligation of the University to negotiate in good faith on terms and conditions of employment; the safeguarding of individual freedom through collective, contractual protection of each individual's rights and privileges; due process protection against arbitrary or unreasonable actions; affiliation with the organized labor movement; recognition that adversary relationships do exist; and reliance on strength to advance group interests.²²

The UC-AFT does go on to recognize that the University System differs from the other levels of public higher education in California.

¹⁹ Ibid.

²⁰ University Guardian, October, 1971.

²¹ Ibid.

²² Excerpts of a speech by Professor David Brody on behalf of the University Council - AFT to the Joint Committee on the Master Plan for Higher Education on February 23, 1972, as reproduced in the University Guardian, March, 1972.

The experience in community colleges, say, or in schools with a different academic history, will tell us little about how collective bargaining will work at the University of California. The basic document in the first round of collective bargaining will almost certainly be the existing body of formal and informal rules and arrangements affecting faculty and staff.²³

To date, the Berkeley local has some 170 members, with another 60 or so in the librarians group.²⁴ The AFT admits it is handicapped by the apathy and conservatism of the Berkeley professoriate and by its past radical image.²⁵ But neither have prevented it from waging a vigorous, comprehensive campaign for membership.

California College and University Faculty Association

With some 150,000 members, the largest educational association in the state is the California Teachers Association (CTA).²⁶ The Association considers itself an independent entity, though it cooperates with the National Education Association -- long the dominant national elementary and secondary teacher organization, with a total membership of over 1.2 million. Like the NEA, the California Teachers Association has established a higher education division, currently with a membership of over 12,000 professors, most of them at the community college and state college level.²⁷ Of the three organizations within the CTA's higher edu-

²³ Ibid.

²⁴ Bottone interview.

²⁵ Ibid.

²⁶ Hayward telephone interview.

²⁷ Ibid.

cation division, the California College and University Faculty Association (CCUFA) is the one related to the UC System. However, CCUFA in practice is concerned mostly with the state colleges. At some future date (probably after a collective bargaining law is passed) CTA is considering emulating the AFT in creating an organization within its higher education division devoted exclusively to faculty in the University of California systems.²⁸

To date, CCUFA has not become involved in issues of collective bargaining at Berkeley. The small CCUFA unit on the campus is primarily confined to the School of Education where, according to its president, it is devoting its efforts to fighting implementation of the Ryan Act on teacher credentialing and persuading the administration and the legislature not to terminate many of the school's programs.²⁹

But CCUFA should not be underestimated. Its leaders say they are quietly laying plans in preparation for a collective bargaining law in higher education.³⁰ Pointing to the fact that though it entered the higher education arena late, NHEA (the NEA's higher education division) has won more representation elections than any other organization, (see appendix 3) and that the CTA, like NEA, has a vast academic constituency, CCUFA

²⁸Ibid.

²⁹Thompson telephone interview.

³⁰Hayward telephone interview.

representatives are confident that California University System academicians will eventually realize that their community of interest lies with CTA affiliation.³¹

California State Employees Association

The California State Employees Association (CSEA) is a remote contender for bargaining agent status at Berkeley. CSEA is very active in matters pertaining to civil service employees in college and University campuses but has little rapport with academicians. It has never been chosen as the representative of any faculty unit. This paper will only indirectly be concerned with CSEA.

³¹
Ibid.

(Page 49 has been omitted.)

THE ISSUES AND THEIR IMPLICATIONS

There are an endless number of issues surrounding collective bargaining in higher education. However this paper will focus only on those of most concern to Berkeley at the present time. Specifically, this section will examine the following issues from the standpoint of the competing organizations:

1. Professionalism versus employee security.
2. Geographic scope and composition of the bargaining unit.
3. Role of the existing Faculty Senate in governance.
4. The use of sanctions.
5. Impact of faculty collective bargaining on students, the administration, the state legislature, and the public.

Professionalism Versus Employee Security

The AAUP and the Faculty Association view the academician as a professional and an individualist, and only secondarily as an employee -- an attitude not easily harmonized with the philosophy of collective bargaining. The following statement from the 1973 AAUP policy handbook characterizes their position:

The AAUP is deeply committed to the proposition that faculty members in higher education are officers of their college and universities. They are not merely employees. They have direct professional obligations to their students, their colleagues, and their disciplines. Because of their

professional competence, they have primary responsibility for central educational decisions. . . .¹

Undoubtedly, most members of the Faculty Association as AAUP members would concur with the following observation by Father Dexter Hanley, President of the University of Scranton:

Since the collective agreement binds all, individual advantages may be sacrificed to the demands of the whole faculty. Merit promotions or awards may cede to seniority. Incremental advantages of the few may be lost in order to better the economic state of the many. In a society as individualistic as that of the faculty in higher education, I believe that unionization will not long sit comfortably with the professionalism of the true educator.²

The AFT position, which is identical to those of CCUFA and CSEA, is that while professionalism does exist and must be recognized, there may be some loss of independence under collective bargaining. As historian Paul Goodman, president of UC-AFT has said,

We at the University like to think of ourselves as independent professionals and in some measure we enjoy that status. But we are also employees, and unless we are organized we are not likely to preserve and defend

¹ "Statement on Faculty Participation in Strikes", AAUP Policy Reports, op. cit., p. 56.

² Dexter L. Hanley, "Issues and Models for Collective Bargaining in Higher Education", Liberal Educator, March, 1971, p. 7.

our professional interests effectively. To be sure, there are "costs" of organization, not just the dues, but those commitments that grow out of alliances with others. . . . (W)e stand to gain far more than we are likely to lose.³

Geographic Scope and Composition of the Bargaining Unit

Probably no issue is as divisive for its long-range significance as the question of the geographic scope and composition of the bargaining unit. Assuming the inevitability of collective bargaining, all organizations appear to favor a three tiered approach to the geographic scope of the bargaining unit, thus separating community, state, and university academicians. Both past practice pursuant to the 1960 Master Plan and the obvious philosophic and functional differences of the three levels support this position. But there the agreement ends.

Faculty Association Position

Late in May of 1973, the Faculty Association passed the following resolution:

The Association strongly opposes any collective bargaining legislation which would require the establishment of units such that a collective bargaining representative for the Berkeley faculty could be selected even though a majority of the members of the Berkeley Division are opposed to that representative. It further urges that any collective bargaining legislation applicable to the University provide that no unit for election purposes include both members and non-members of any division of the Academic Senate unless a majority of the members of the division vote in a self-determination election agree to representation on a more inclusive basis.

³

Report by Paul Goodman, president of UC-AFT, prepared for the Policy Committee, UC Berkeley Senate, April 12, 1972

By its wording the resolution disfavors a system-wide unit.

It is the Faculty Association's position that the nine campuses within the University of California have diverse characteristics and specialized interests.⁴ They function autonomously and are administered that way as recognized by Section 101.3 of the Standing Orders of the Regents which give each Chancellor responsibility for the administration of his own campus.⁵ "It would, indeed, be a strange result if the faculty at Riverside, for example, or Santa Cruz, should have thrust upon it the choice of a representative for collective bargaining which is in large measure determined by the votes of the faculties at Berkeley and Los Angeles."⁶

By its second sentence, the resolution also speaks out against a situation where non-Senate academicians at a single campus could overwhelm the vote of Senate Division members in a bargaining election.

(It should be recalled that only 1700 of the 5400 academic employees at Berkeley are Senate Division members.) In its statement to the Assembly Advisory Council on Public Employee Relations (Aaron Commission), the Faculty Association defended this position by pointing out that the faculty Senate performs what can be considered a management function; it is not

⁴ Supplemental Statement to the Assembly Advisory Council on Public Employee Relations (Aaron Commission), August 24, 1972, p. 4 (hereafter referred to as Supplemental Statement).

⁵ Ibid., p. 5.

⁶ Ibid.

"a delegate or representative body."⁷ (The Association quickly noted that while the Senate does perform this management function, its constituents "are also employees and they have a great many interests as employees which a majority may wish to seek to protect and advance through collective bargaining.")⁸

To preserve the Senate's special function, the bargaining unit should not be so defined, according to the Association, as to include academic personnel who are not members of the Senate.

The establishment of units for election (and, prima facie, for bargaining) purposes which would include both faculty as thus defined and additional categories of academic personnel would, at the least, pose the possibility of serious conflict with the established structure of university governance and, at the most, pose a substantial threat to the continued existence of that structure and the tradition of faculty autonomy.⁹

Dr. Joseph Garbarino of the Berkeley Institute for Business and Economic Research also contends that the rigid standards of selection and review of teaching faculty at Berkeley suggests a separate unit for such personnel.¹⁰

⁷ Ibid., p. 2.

⁸ Ibid.

⁹ Ibid., p. 3.

¹⁰ Garbarino interview.

The Faculty Association thus stands in opposition to the unit determination sections of both the Moretti and Moscone measures as they were introduced into the Legislature. In testimony before the Assembly Committee on Public Employment, Association Chairman David Feller, himself a noted labor lawyer, spoke against the language in the Moretti bill mandating that "the appropriate bargaining unit shall be the largest reasonable unit of employees of the employer. . . ." ¹¹ Claiming that there is no such things as "the" appropriate bargaining unit, Feller urged modification of the language to conform more closely to practice under the National Labor Relations Act.

Under the National Act, the Labor Board does decide questions of appropriate unit but it does ordinarily not decide that the unit so determined is the only appropriate one. Thus, when a union files a representation case asking for an election the Board decides whether the unit which the union seeks is appropriate. In another case, presenting identical characteristics, or indeed with respect to the same employees at a later time, it might decide that a different unit, either larger or smaller, is also appropriate if such a unit were requested. When there is a dispute between two competing organizations, each of which seeks a different unit, the Labor Board will decide which of the two tendered to it is the most appropriate unit. But in no case does it decide that the unit so established is the only appropriate unit. ¹² (underlining in original)

¹¹ Article 5, Section 3505(a).

¹² Statement by Dr. David E. Feller to the Assembly Committee on Public Employment, May 25, 1973, p. 2.

By limiting unit determination to "the" appropriate unit, and then specifying that this shall be "the largest reasonable" unit, Feller contended that "the statute would make the ideal bargaining unit the initial one" and thus would unwisely restrict the unionization of public employees.¹³

As applied to the University of California, Feller argued that coupled with its denial to professional employees of a right to decide whether they want to be members of bargaining units including non-professional employees (under the Moretti proposal, as we have seen, the PERB makes this decision), the language of the Moretti bill pertaining to unit determination would "have a substantial likelihood of producing an effect which would be disastrous for the continued maintenance of the University of California as an institution of excellence."¹⁴

Consequently, Feller argued that Section 3523(a) of AB 1243 be modified to read as follows:

"The Board shall be empowered to determine whether the bargaining unit sought in any case is an appropriate unit for bargaining and, where there is disagreement between employee organizations as to the appropriate unit, to determine which of the units sought is the most appropriate for the purposes of collective bargaining.

¹³ Ibid., p. 5.

¹⁴ Ibid., p. 11.

Such determination shall not be deemed to prevent the establishment of larger bargaining units by consent of the parties if such larger units would also be appropriate." ¹⁵

He also urged addition of the following special provision dealing with the University of California to the above.

"In the University of California the Board shall not determine that a unit is appropriate (for election purposes) if it includes both members and non-members of any division of the Academic Senate unless a majority of the members of the division agree to inclusion in such larger unit." ¹⁶
(material in original not bracketed; Feller noted that the material enclosed in brackets above may not be necessary if his proposed rewording of 3523(a) above is adopted.)

In order to prevent the exclusion from the bargaining units of Senate members who might be judged "managerial employees" under the wording of the original Moretti proposal, Feller also urged an addition to AB 1243 to the effect that:

"No employee shall be deemed to be a managerial employee solely because he is as a member of an academic senate or similar institution engaged in the formulation or administration of academic policies or programs, or any committee thereof." ¹⁷

¹⁵ Ibid., p. 7.

¹⁶ Ibid., p. 12.

¹⁷ Ibid., p. 13.

Thus far, the changes in AB 1243 have generally been favorable to the Feller point of view. On August 13, the Assembly voted to add a provision to article 6, the section pertaining to unit determination, to the effect that "...an appropriate group of skilled craft employees shall have the right to be a separate unit of representation, based upon occupation."¹⁸ While teaching faculty were not specifically mentioned and while no mechanism was stipulated for separating out procedures, an argument can be made that tenured faculty may separate out from a unit of all academic employees based on this amendment.^{18a} On September 5th, with the Moretti Bill now in the Senate, action was taken to delete the phrase "the appropriate unit shall be the largest reasonable unit of employees of the employer." In its place, the Senate substituted the phrase "an appropriate unit shall be a reasonable unit of employees of the employer that meets the criteria established . . . below."^{18b} Some preference for large units, however, was retained in the form of a new criterion under article 6, section (b).

The impact on the collective bargaining relationship created by fragmentation of employees and/or any proliferation of units among the employees of an employer.^{18c}

Thus, the language on unit determination originally proposed by the Aaron Commission has been "softened up," although the Legislature has yet to adopt the Faculty Association's position

¹⁸Assembly Daily Journal, August 13, 1973, p. 6238.

^{18a}Telephone conversation with Dr. Feller, October 18, 1973.

^{18b}Senate Daily Journal, September 5, 1973, p. 5627.

^{18c}Ibid.

in toto as it applies to the University of California. Since the bill remains in the Senate, further changes may well occur when the Legislature reconvenes next year.

In regard to Senate Bill 400, the Moscone measure, Faculty Association Chairman Feller also urged a similar change in wording pertaining to the determination of educational bargaining units.^{18d} As we have already noted, before the bill was sent on to the Governor, the Assembly adopted language exempting the University of California from the full impact of the unit determination section.^{18e}

^{18d}

Letter sent by Dr. Feller to Senator George R. Moscone on behalf of the Berkeley Faculty Association, May 22, 1973.

^{18e}

See page 18, supra.

AFT and CCUFA Positions

The AFT emphasizes that the campus-by-campus approach to unit determination runs "counter to the present character of the University of California which has a common salary schedule, uniform fringe benefits, and the same standards for appointment and promotion for all faculty regardless of the campus on which they teach."¹⁹ Further, a campus-by-campus approach so diminishes the power of academicians to speak with one voice that they can never expect to overcome the powerlessness which presently plagues them.²⁰ A system-wide bargaining unit coupled with AFT's labor affiliation means "financial and political support right now to represent the interests of faculty and academic employees in Sacramento and in University Hall."²¹

Echoing the AFT position, CCUFA openly admits that in the best of all possible worlds, a campus-by-campus unit determination would be preferred but notes that the pattern of past determinations in other jurisdictions illustrates that the Faculty Association position is unlikely to prevail.²² CCUFA cites the 1970 decision by New York's Public Employment Relations Board to include all schools of the State University system in one unit as particularly relevant to the University

¹⁹ University Guardian, October, 1972.

²⁰ Bottone interview.

²¹ "University at the Crossroads," AFT flyer.

²² Hayward telephone interview.

System in California. Like the University of California, SUNY is operated pursuant to a Master Plan, has system-wide terms and conditions of employment, and has major policy decisions made by a system-wide chancellor and Board of Trustees.

Both CCUFA and AFT have as one of their main tenets the concept of a bargaining unit of all academic employees organized on a system-wide basis. Both groups thus would hope to have all 21,200 University of California academicians in one unit. According to Sam Bottone, executive secretary of the UC-AFT, a unit limited to Senate members sets up a craft union, resulting in a conflict of interest and fractionated bargaining power.²³ There should be no "first and second class citizens" at Berkeley or in the UC System.²⁴

The (Faculty) Association is an organization modeled on a craft union basis; though clearly a narrow, craft union strategy which seeks to defend the special privileges of a few is politically bankrupt. The AFT, in contrast, believes that (21,000) UC academic employees organized in one organization will be a far more potent body in advancing the special interests of each of its constituent parts. More important, the AFT rejects the craft union mentality because it recognizes that the faculty must develop a socially enlightened program for higher education in California in order to receive public support.²⁵ (italics in original)

²³ Bottone interview.

²⁴ University Guardian, October, 1972.

²⁵ "The Necessity of Organization: AFT or Faculty Association" AFT flyer.

Neither UC-AFT nor CTA-CCUFA are outwardly concerned about a labor relations maxim of long standing that claims the larger the bargaining unit, the harder it is to win an election.²⁶

Role of the Existing Faculty Senate in Governance

The Berkeley Senate Division, like the Senate Divisions at other UC System campuses, plays an important role in campus decision-making. The Senate framework, including members of the administration as well as teaching faculty, seeks to bring faculty and administration together to deliberate as educational professionals on shared concerns.

²⁶Feller interview.

²⁷deleted.

²⁸deleted.

(See Appendix 5 for Section 105.1(a) of the By-Laws and Standing Orders of the Regents describing the organization of the Academic Senate.) While the locus of some decision-making at Berkeley has shifted more and more to the President of the University of California and the Board of Regents as well as to the Coordinating Council for Higher Education (as indicated earlier in the paper), the Berkeley Senate Division, acting through its representative assembly, still participates in many decisions affecting the institution.

In accordance with the Standing Orders of the Board of Regents, these decisions generally include academic personnel policy, research policy, curriculum and instructional matters and, to a lesser extent, general institutional policy formation pertaining to long range planning, student affairs, selection of key administrators, and budget development. Matthew Finkin, writing in the AAUP Bulletin, defends this approach to shared decision-making as justified "by the fundamentally nonhierarchical structure of the university; its primary functions of teaching and research are carried out by individual faculty members operating largely as autonomous professionals."²⁹ Indeed, in 1967, the AAUP membership

²⁹ Matthew W. Finkin, "Collective Bargaining and University Government", AAUP Bulletin, June, 1971, p. 149.

endorsed this concept of academic governance by voting approval of its "Statement on Government of Colleges and Universities" drafted jointly by the AAUP, the American Council on Education, and the Association of Governing Boards of Colleges and Universities. (Excerpts from the Statement appear in Appendix 6.)

According to Dr. Thomas Ambrogi of the AAUP Western Regional Office, the AAUP views the ideal contract as one "writing a well-organized faculty handbook into the contract making the faculty senate the bargaining agent."³⁰ As noted above, the Berkeley Faculty Association supports this position, though acknowledging by its existence both the statutory restrictions on the use of a publicly-funded entity like the Senate Division as a bargaining agent and the desirability of preserving the non-involvement of the Senate in bargaining matters. In short, the Faculty Association seeks to keep important matters from slipping away from the faculty to a non-Senate based bargaining agent, thereby minimizing the chances of having positions taken on "issues which might be only tangentially related to those with which the faculty might have a particular concern."³¹

³⁰ Ambrogi interview.

³¹ Supplemental Statement, op. cit., p. 6.

By negotiating contractual guarantees for Senate jurisdiction over certain decision-making areas, a Senate-based bargaining agent could eliminate dependence on the Board of Regents for power. Whether Article 9 of the California Constitution would allow such a Senate-based unit to exercise as a matter of contractual right powers which are now only delegated by the Regents to the Senate is open to question.

The AFT is quick to minimize, by substantially echoing the views of the Faculty Association, the threat a system-wide bargaining agent for all academic employees might constitute to the Academic Senate.

The AFT seeks a collective bargaining agreement with the Regents that will strengthen the Senate. Through a negotiated contract, the AFT seeks to make the Senate a contractually authorized body. The Senate would no longer be dependent on the discretion of the Administration or Regents, who now decide whether to consult it or accept its advice, or even consult it at all. . . . At the same time the AFT . . . strengthens the Senate, it will advance the interests of academic employees in those areas where the Senate is not an appropriate mechanism. Thus, the Union will negotiate academic salaries and fringe benefits. . . . There are no guarantees that settlements will be fully funded. For that reason, the academic staff must have influential allies in Sacramento, and they can only expect to have such a voice by becoming part of the California labor movement.³²

The AFT is careful to point out that a bargaining unit encompassing all academic employees is not a threat to existing internal Senate procedures. For example, in its literature, the AFT states that it would,

³² "The Academic Senate and Unionism", AFT flyer.

through contract, seek to have decisions reached by the Senate Privilege and Tenure Committees be binding on the Administration. It goes on, however, to declare that "many types of grievances do not . . . fall within the jurisdiction of Senate committees which are not empowered to hear complaints from the academic staff."³³ Rather than modify the membership or procedures of the Senate, the AFT would solve this problem by "strengthening . . . the present grievance procedure available to non-Senate academic employees (to make it) binding upon the administration."³⁴ It then adds that such a strengthened grievance procedure "should be made available to Senate members as an alternative to Privilege and Tenure proceedings."³⁵

While CCUFA has not taken a definitive position with regard to this issue, the organization does favor retention of institutional senates which play a major role in governance. Regardless of who the bargaining agent is, CCUFA maintains that the faculty through their Senate can achieve things impossible to be reduced to writing, as well as achieve things which the faculty may not wish to put into a contract.³⁶

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Hayward telephone interview.

The Use of Sanctions

Successful collective negotiation under a permissive state statute implies "resort to economic weapons should more peaceful measures not avail."³⁷ Will professors engage in economic slowdowns, boycotts, or strikes to accomplish their aims? Until recently, the 90,000 member AAUP was unalterably opposed to both collective bargaining and the right to strike. While now approving of collective bargaining as another means to achieve its objectives, the AAUP has not taken so expansive a view of the right to strike. Its brief 1968 "Statement on Faculty Participation in Strikes" includes this caveat:

We believe that these principles of shared authority and responsibility render the strike inappropriate as a mechanism for the resolution of most conflicts within higher education.³⁸

The Statement goes on to outline the conditions under which a faculty strike would be justified.

It should be assumed that faculty members will exercise their right to strike only if they believe that another component of the institution (or a controlling agency of government, such as a legislature or governor) is inflexibly bent on a course which undermines an essential element of the educational process.³⁹

Thus, in a rather back-handed way, the AAUP has come around to support a faculty strike, at least for some purposes.

³⁷ American Shipbuilding Co. v. NLRB, 380 U.S. 300 at .

³⁸ "Statement on Faculty Participation in Strikes," AAUP Policy Reports, op. cit., p. 56.

³⁹ Ibid.

Although the Berkeley Faculty Association has not spoken publicly on this issue and admits to having some members who are opposed to collective bargaining and the right to strike,⁴⁰ most of its members probably would adhere to the AAUP Statement.

The AFT adheres to the traditional concept of collective bargaining and thus does not hesitate to support the right to strike where it is allowed by law and where its effectiveness is not open to dispute.⁴¹ In the past, the AFT has been the most aggressive of the education unions in using economic weaponry to secure its objectives. As one of its publicity flyers puts it, "No group gains power without a struggle, and teacher unionism has a history full of such struggles."⁴²

CCUFA also supports a right to strike. But according to William Hayward, CTA Director of Communication for higher education, a strike by professors in the UC System would not necessarily result in any gains and might even be counter-productive.⁴³ Pointing out that only a strike by elementary and secondary educators can have an impact on the public because of the custodial function teachers perform for parents, Hayward concludes that university professors must affiliate with a statewide or

⁴⁰ Feller interview.

⁴¹ Bottone interview.

⁴² "Why We Need A Union," AFT flyer.

⁴³ Hayward telephone interview.

national union possessing political and economic clout to have any impact at the bargaining table.

Effect of Bargaining on Other Groups

What effect will collective bargaining by faculty members have on students, administrators, the legislature and the general public? The AAUP and the Faculty Association adhere to the "shared authority" approach to academic governance, thus avoiding an adversary relationship with the administration of the institution in question. The Faculty Association realizes that it would have to affiliate with larger organizations should it be chosen the Berkeley faculty bargaining agent (in the event a law to do so is passed by the legislature) in order to have an impact on the legislature.⁴⁴ Such affiliation would prevent its directly confronting the legislature. Dr. Ambrogi of the AAUP questions whether "political clout" is the only way for a professional group to have influence with legislative elements. He sees the acknowledged reputation of outstanding campus professionals having a positive effect on political leaders if academicians make the effort to open channels of communication to Sacramento.⁴⁵

Both AFT and CCUFA openly accuse the AAUP and the Faculty Association of engaging in self-deception and wishful thinking in believing that shared authority and professionalism will achieve faculty objectives.

⁴⁴ Feller interview.

⁴⁵ Ambrogi interview.

They point out that mutual trust, shared goals, and professionalism have broken down and certainly will not be strengthened by a new state law opening up collective action for state employees. Sam Bottone of the AFT points to suspicion and criticism of elitist faculty members both by the legislature and the public.⁴⁶ According to Bottone, it is inconceivable that a provincial group of faculty members could make much headway through reliance on professionalism and persuasion in the political arena.⁴⁷

All organizations are concerned about the potential impact of faculty organization on students. All agree with the AAUP that faculty members "have direct professional obligations to their students, their colleagues, and their disciplines."⁴⁸ This is clearly one reason why the AAUP and Faculty Association hope to maintain a low profile on adversary collective bargaining. But the scenario painted by Myron Lieberman in his Harper's article on the portents of faculty collective bargaining in terms of the rise of student unions which "will line up with the administration against the faculty"⁴⁹ is hotly disputed by the Director of Communication for CTA's higher education divisions. Lieberman, says, William Hayward,

⁴⁶ Bottone interview.

⁴⁷ Ibid.

⁴⁸ "Statement on Faculty Participation in Strikes," AAUP Policy Reports, op. cit., p. 56.

⁴⁹ Lieberman, op. cit., p. 70.

"wants to sell a story."⁵⁰ Hayward says that in his three years of involvement with higher educational collective bargaining he has not seen any negative impact on students. "The students will do their thing whether or not there are unions."⁵¹ But as the next section suggests, collective bargaining may work to thwart students and other third parties from "doing their thing" insofar as it relates to having an impact on the decision-making process.

The California Legislature appears to have had a similar concern when deliberating on the Moscone Bill. Before it was passed, the Assembly added the following truly remarkable language requiring all negotiating sessions to be open to the public and granting students special rights to participate in negotiating sessions.

(d) All meetings between any board of education or any of its negotiating agents and any exclusive representative involving collective negotiations shall be open to the public, and all persons shall be permitted to attend such meetings.

(e) In negotiations over the terms and conditions of service and other matters affecting the working environment of employees in institutions of higher education, a student representative selected by the respective campus or systemwide student body association may be present at all times during which negotiations take place between a board of education and an exclusive representative selected pursuant to Section 13094. The student representative shall have access to all written draft agreements and all other written documents pertaining to negotiations exchanged by the board of education and the exclusive representative, including a copy of any prepared written transcripts of any negotiating sessions. The student representative shall have the right at reasonable times during the negotiating sessions to comment upon the impact of proposed agreements on the educational environment of students.

(f) Prior to the entering into of a comprehensive agreement

⁵⁰ Hayward telephone interview.

⁵¹ Ibid.

between a board of education and the exclusive representative covering terms and conditions of service and other matters affecting the working environment of employees in institutions of higher education, a separate public report on the impact of the proposed agreement on educational quality, level of service to students, and direct costs to students may be prepared by the student representative who has been present at the negotiations pursuant to subdivision (e), in consultation with the representatives of the board of education and the exclusive representative.⁵²

The Senate concurred in the language, and the bill was sent on to the Governor in this form. Whether the Legislature will add a similar provision to the now-pending Moretti measure is not known at this point. But certainly the student lobby, once having tasted success, will make every effort to see that they do.

⁵²

Assembly Daily Journal, August 27, 1973, p. 7008.

DISCUSSION AND CONCLUSION

How one views the effect collective bargaining will have on colleges and universities depends in part on one's occupational position within higher education and one's belief system. The purpose of this final section is to avoid making value judgments and instead try to point out some of the likely effects collective bargaining as it is now being discussed in California will have on the University of California at Berkeley and by implication the other campuses in the UC System and on similarly situated campuses elsewhere. Since experience to date with adversary collective bargaining is so limited, many of the points discussed herein are largely speculative, giving rise to many more questions than answers. The section is divided into three parts dealing with faculty attitudes toward collective bargaining, the influence of the legal framework, and possible effects of collective bargaining on the Berkeley campus.

Faculty Attitudes

The American Council on Education recently completed a survey showing that some 66 percent of the nation's faculty members now support collective bargaining, up from 59 percent in 1968-69.¹ A survey completed in 1971 by J. Victor Baldridge of the Stanford Center for Research and Development in Teaching revealed that only 19 percent of the faculties at private institutions offering at

¹The Chronicle of Higher Education, August 27, 1973.

least the masters degree supported collective bargaining as compared to 60 percent of the faculties at community colleges.^{1a}

The most scholarly professors belong to no union, reports Harvard Professor Seymour M. Lipset, who conducted a survey in the fall of 1972. He and his associate, Everett Ladd, Jr., of the University of Connecticut, conclude that professors at major research-oriented institutions are cross-pressured by their political liberalism and by their professional values and interests.²

And . . . the latter considerations typically prove decisive. The relative lack of support for unionization among professors of high attainment exists not because of, but in spite of, their broad ideological commitments, and is testimony to the strength of competing interests and values.³

These observations are obviously confirmed when applied to the University of California at Berkeley. Fewer than one-fifth of the 5400 academic employees at the institution have pledged support to a union

^{1a}

J. Victor Baldrige, et al, "Faculty Power and Decision Processes: Institutional Factors, Professional Autonomy, and Morale," Stanford University, 1973.

² Everett Ladd and Seymour Lipset, Professors, Unions, and American Higher Education, (Carnegie Commission: Berkeley, Calif. 1973), p. .

³ Ibid., p. 38.

(excluding the AAUP, which, as previously indicated, has urged its members to join the Faculty Association). And some of the over 400 who have joined the Faculty Association have done so largely as a defense against the UC-AFT and do not pretend to endorse adversary collective bargaining or the right to strike.⁴

If numbers were all there were to the issues of collective bargaining at Berkeley, this paper could end here with a conclusion that future unionization is nowhere in sight. But while observers like Chancellor Albert Bowker and Professor Joseph Garbarino agree that there is relatively little faculty action presently toward collective bargaining at UCS, they are both quick to add that the situation, in the words of Dr. Garbarino, "could change overnight."⁵ A deteriorating financial situation or unilateral changes by administrative or legislative officials in matters affecting faculty could rapidly spur greater interest in collective action.

The Legal Framework

Clearly, the biggest catalyst to unionization would be the passage of a collective bargaining bill for public employees in California. If there were such a bill, Dr. Garbarino predicts that the state system would organize instantly, probably with the AFT.⁶ Based on his experience in

⁴ Feller interview.

⁵ Garbarino interview.

⁶ Ibid.

New York, Chancellor Bowker concludes that "once there's a law, then there is escalation quickly into collective bargaining."⁷

The focus thus shifts from Berkeley to the legislature, for the political pressures which shape the law are more important than what is happening at Berkeley itself.

In the private sector, the 1935 National Labor Relations Act states that the union which wins an election by gaining the majority vote of members in the previously determined (by the National Labor Relations Board) appropriate unit shall represent all the employees in the unit. When this concept of exclusivity is joined with some form of organizational security device such as a union shop provision (all who work for the employer must join the union after a specified time), as is permitted under the NLRA, there is obviously little alternative action for the employee who dislikes unions.

A major rationale for these two features of collective bargaining lies in the belief that members of groups do not act in the same way individuals act. According to Mancur Olson, members of a large group have no incentive to participate in action for a collective benefit, since by doing nothing they still will receive the benefit.⁸ Olson claims that most group

⁷ Bowker interview.

⁸ Mancur Olson, Jr., The Logic of Collective Action: Public Goods and the Theory of Groups. (New York, 1969). See especially chapter 3, "The Labor Union and Economic Freedom."

members exhibit this behavior and are acting in a rational manner in doing so. Thus, to prevent "free-riders," unions have sought and won in the private industrial sector and in most states the right to be the exclusive representative of all employees in the unit once a union is voted in by the majority.⁹ While unions have also avidly sought to extend the NLRA right to have organizational security devices like the union shop to the public sector, they have not been as successful. Only a small number of states either permit or require some form of organizational security for a duly elected bargaining agent.¹⁰

Without binding security agreements, the proportion of the bargaining unit population actually enrolled in the union may be quite low. Professor Garbarino in a survey of five educational institutions where the faculty have chosen a bargaining agent (SUNY, CUNY, Southeastern Massachusetts, Rutgers, and Central Michigan) found the proportion of the unit population ranged from a high of 60 percent at CUNY to Central Michigan's 30 percent.¹¹ Not only does low membership limit the union's financial resources, it also raises disturbing questions for both employers and unions relating to the

⁹ Aaron Commission, op. cit., pp. 61-62.

¹⁰ Ibid., p. 251.

¹¹ Joseph Garbarino, "Faculty Unionism: From Theory to Practice," Industrial Relations, vol. 11, February, 1972.

relationship of the bargaining representative to its constituency as a whole, the majority of whom voted for the union in an election.^{11a}

An awareness of the importance of exclusivity and union security agreements to successful collective bargaining is apparent among the supporters of the two bills recently before the California legislature. Both mandate exclusivity; the Moretti bill as introduced makes organizational security a bargainable issue, and before the Moscone measure was reported out, it was amended to make the agency shop*, but not the union or closed shop, a bargainable issue.^{11b}

One can thus understand the reluctance of many UCB college professors who consider themselves free and independent agents to endorse collective bargaining.

The most significant feature of a public employee bargaining law is the language pertaining to unit determination. As already noted, the competing organizations differ dramatically in their views on the geographic size and composition of the bargaining

^{11a}

Low membership may not indicate a lack of support for unionization. Joseph Garbarino believes it rather results from a composition of faculty apathy, professionalism, and memberships in multiple organizations. See reference to his views in Carr and VanEyck, Collective Bargaining Comes to the Campus (American Council on Education, 1973), p. 133.

^{11b}

Assembly Daily Journal, August 27, 1973, p. 7009.

*The agency shop provision requires that all employees in the bargaining unit must pay fees equal in amount to the union initiation fee, periodic dues, and general assessments, whether or not they belong to the union. The union shop requires that all employees join the union after a certain period; the closed shop requires union membership as a condition of employment and is illegal in the private sector under the NLRA.

unit.

Based on the evidence gathered from the five institutions he studied, Professor Garbarino concludes that public employee labor relations boards tend to favor large bargaining units both in geographic scope and in composition.¹² As discussed earlier in this paper, the emphasis in the proposed California measures has also been generally in the direction of large, all-encompassing units. Donald Wollett, one of the members of the Aaron Commission, justifies the Commission's preference for large bargaining units by pointing out that proliferation of bargaining units has long been a major problem in the public sector.¹³ It is also possible to justify the emphasis on large bargaining units as a desire to create units which can effectively bargain at the locus of power. Particularly in the case of public higher education, growing centralization of policy formation would appear to legitimate this preference.^{13a}

¹² Garbarino, "Faculty Unionism...", op. cit., pp. 2-3.

¹³ From a presentation by Professor Wollett to a Stanford University law seminar, April, 1973.

^{13a} The NLRB, which oversees collective bargaining at private colleges and universities, modified its unit determination standards in July of this year, deciding that contrary to earlier rulings, part-time employees shall not be lumped together with other faculty members in the same unit. The Board has also decided in the cases of Syracuse and New York Universities that law professors be given a chance to vote against collective bargaining even if the rest of the university faculty votes for it. The Chronicle of Higher Education, July 30, 1973. How these rulings will affect future decisions of state boards is unknown, though state boards generally tend to follow the lead of the more experienced NLRB. The consequences would be extensive, since these rulings tend to be in the direction of fostering a fragmentation and consequent proliferation of bargaining groups.

Effects of a Collective Bargaining Law on the Berkeley Campus

Academic Senate Division

Assuming that Article 9 of the California Constitution does not prove to be a major stumbling block to faculty participation in bargaining, a new collective bargaining law will least adversely affect the Berkeley Academic Senate Division if the unit determination results in a campus-based bargaining unit limited to those who hold membership in the Senate. If such a situation occurs, the Faculty Association would perform most of the external relations of the faculty through collective bargaining and legislative lobbying (the latter necessitated in part because the legislature has ultimate control of the purse), while the Senate Division would handle internal relations as it presently does under the auspices of the legislature and the Board of Regents.

While the balance of power may very well shift to the Faculty Association as economic interests begin to dominate and as centralization causes more decision-making to shift off-campus to, for example, the CCHE, divergence of interests would be kept at a minimum, since the membership of the two organizations is the same. Further, if the unit were confined to Senate members, leaders of the two bodies could conceivably be the same or at least similar in attitudes and behavior. Recent research has shown these leaders to be the senior faculty, particularly the most professionally productive.¹⁴

But even in this best-of-all-possible collective bargaining worlds, there are potential drawbacks for the Academic Senate Division. First, since there are two organizations, coordination and communication between them would be cumbersome. Secondly, competition from other bargaining units, say, for example, a bargaining unit of all Berkeley academic employees not in the Senate, might force the Faculty Association to play a more active role, thus further eroding the power and prestige of its counterpart in internal affairs. Competition from other units, as well as legislative pressures for greater centralized decision-making, might force the Board of Regents to reclaim authority now delegated to the Senate. Should this occur at the same time the Faculty Association is

¹⁴ Based on a reported conversation with Martin A. Trow, Berkeley, California, February, 1973. As reported in "Collective Bargaining and the Academic Senate at Berkeley," unpublished paper by William M. Zumeta, March 23, 1973, Berkeley, California.

increasing its functioning, the Senate Division could conceivably be left with little but membership problems to deliberate over.

A third concern centers on whether the Faculty Association can effectively represent Senate interests under the impetus of competition with other groups. Could the Association be an effective lobbying agent for Senate members, a group none-too-popular with the legislature? As Garbarino points out,

The New York case histories suggest that once something approaching a formal bargaining relationship is established in an institution of substantial size, . . . the low levels of organizational activity that can be sustained by a largely amateur, part-time leadership, operating on a low or deficit budget threatens organization effectiveness.¹⁵

Of course, as Professor Feller indicates, the Faculty Association could always affiliate with an outside group if it should become necessary for effective lobbying and bargaining. But affiliation would draw power away from the campus and thus further diminish the traditional role of the Senate Division.

What happens to the Senate if the bargaining unit includes all academic personnel whether or not they are members of the Senate? According to Professor Garbarino, the most aggrieved members of a unit become the leaders in setting the objectives of the unit.¹⁶ If the unit

¹⁵ Joseph Garbarino, "Precarious Professors: New Patterns of Representation," Industrial Relations, vol. 10, February, 1971, p. 14.

¹⁶ Garbarino interview.

consisted of all academic employees, then Senate leaders might not control unit policy formation, since the most aggrieved in this case would be lower echelon, non-Senate Division academic employees. (Chancellor Bowker claims the most militant bargainers now at Berkeley are the unionized librarians.¹⁷) The result, says Garbarino, is a "leveling process" where most of the benefits accrue to junior faculty and to the support professionals.¹⁸

A system-wide bargaining unit of all academic employees would further submerge the interests of UC Academic Senates on individual campuses, as power shifts off campus and upward to centralized administrative authorities and bargaining agents.

¹⁷ Bowker interview.

¹⁸ Garbarino, "Faculty Unionism . . ." op. cit., pp. 2-3.

A "leveling" tendency produces serious problems for the quality institution seeking to build and reward a strong faculty. As Carr and VanEyck point out, ". . . such institutions as SUNY and CUNY will shortly face a hard choice: they can try to build and maintain strong faculties and quality educational programs which will require some movement toward recognizing and rewarding individual merit, or they can pursue strictly egalitarian policies in compensating faculty members at the risk of encouraging a trend toward uniformity and mediocrity." Carr and VanEyck, Collective Bargaining Comes to the Campus, op. cit., pp. 270-271. See also their discussion, pp. 267ff, of contracts where provision has been made for merit salary increases as well as across-the-board increases. Most of these institutions are not part of large state systems.

Thus the greater the difference in constituency between the Berkeley Senate Division and the bargaining agent, the more likely their interests are to diverge. Such interest-divergence could result in internal tension and conflict. For example, since a bargaining agent has the right to negotiate salaries, a non-Senate based agent would pose a threat to the continued existence of the Senate Welfare Committee, which presently advises the Administration on these matters. Similarly, such an agent may feel pressure to intervene in the case of tenure denial by the Senate. Under collective bargaining, grievance processing is the means of resolving conflicts within the organization arising under the contract. As such, grievance and arbitration processes lie at the heart of collective bargaining. With growing societal concern for the rights of individuals, it is evident that these procedures as carried over from the industrial sector may well pose a serious threat to the continued existence of goals and procedures worked out over the years by the academic profession. Under most ^{industrial} collective bargaining contracts the dissatisfied employee is given the opportunity to lodge complaints and have them processed through a number of steps, usually with the backing of the union and usually culminating in a decision by an outside arbitrator binding on both sides. Although the experience with grievance-arbitration in higher education is limited, Carr and VanEyck from their review of recent grievance-arbitration decisions dealing with faculty complaints conclude that traditional faculty peer judgment processes are jeopardized.^{18a}

^{18a} See particularly pp. 212-239, "Collective Bargaining: The Continuing Process," in Carr and VanEyck, ibid.

Should there be major disputes between the Senate and the bargaining agent, exclusivity would prevent Senate recourse to another forum. The vote of the unit membership would be the final arbiter.

If such a large unit determination is made, the traditional Senate-based power structure so common in institutions like Berkeley would probably be radically transformed if not eliminated. Donald O'Dowd, president of Oakland University in Michigan, foresees a change in the locus of faculty power.

. . . I think much of the influence is now shifting to the younger and untenured faculty under collective bargaining. They're going to have much more power, more impact on policy, and they're going to change the nature of the university.¹⁹

Governance and the Administration

The scope of bargainable issues as described in the present George Brown Act and in the more comprehensive Moretti and Moscone proposals is large, generally including all matters pertaining to wages, hours, and working conditions. Theoretically the Berkeley faculty can thus bargain over many issues considered part of management prerogative in the industrial sector, issues which are now within the jurisdiction of the present Academic Senate Division through delegation by the Board of Regents. Assuming Article 9 can be overcome, it is the position of the UC-AFT and CCUFA that the power now held on a de facto basis by the Berkeley

¹⁹ Donald O'Dowd, as quoted in "A Roundtable: How to Live with Faculty Power," College and University Business, December, 1972, p. 43.

Senate Division can be rendered immune from Board of Regents recall by giving it de jure legal status in a binding contract. As indicated below, this is probably unlikely to occur. These organizations also want, of course, to widen the power base by inclusion of all academic personnel within the bargaining unit.

The introduction of bilateral determination of issues resulting in a binding, legal contract to the higher educational institution results in a formalization of power relationships. "Employer" and "employee" are defined, often with great difficulty, as in the case of department chairmen.²⁰ In dividing the university into "worker-professors and manager-administrators and governing boards," says Sanford Kadish, past president of the AAUP and Berkeley law professor, collective bargaining "imperils the premise of shared authority, encourages the polarization of interests, and exaggerates the adversary concerns over interests held in common."²¹

The introduction of legalism also results in greater specificity of rules relating to conflict resolution, not only between faculty and administration, but also within the bargaining unit, particularly if a campus-sponsored faculty governing body is involved, and within the ranks of the

²⁰

For a thorough discussion of the difficulties and complexities surrounding determination of the status of department chairmen, see David W. Leslie, "NLRB Rulings on the Department Chairmanship," Educational Record, Fall, 1972. See also discussion of the "effectually recommending" test applied by the NLRB in Carr and VanEyck, Collective Bargaining Comes to the Campus, op. cit., pp. 105 ff. Note that most recently the NLRB has announced a presumption that department chairmen are not supervisors and should be included in the bargaining unit, unless the administration can prove otherwise. The Chronicle of Higher Education, May 29, 1973.

²¹

Sanford H. Kadish, "The Theory of the Profession and Its Predicament," AAUP Bulletin, June, 1972, p. 122.

administration. A six-year study of Michigan community colleges beginning with the advent of collective bargaining confirms the suggestion that adversary collective bargaining results in greater specificity of rules and regulations, as well as in more formality between administration and faculty and greater democracy in relations among faculty members as a group.²²

While one should not and cannot easily generalize from community colleges to four year and graduate institutions, the findings of this study do give us some insight into changes that adversary collective bargaining, itself a stable concept, will bring to academic institutions.

Formal collective bargaining in higher education may greatly alter the character of the administration. In the case of multi-campus systems, more administrative power can be expected to shift off-campus and upward to centralized administrative agencies in response to the demands of large bargaining units covering employees on a system-wide basis. In the case of UCB, should the bargaining unit for faculty include all academic employees on a system-wide basis, the Board of Regents and the still more encompassing CCHE (next year, the California Postsecondary Education Commission) would be forced to reclaim power now in the hands of the Chancellor and his staff to meet bargaining needs over such issues as student-faculty ratio, class loads, etc. Over some issues such as wage increases, even the legislature itself may become involved. At SUNY the agreement is between the bargaining agent and "the Executive Branch of the State of New York."

²² Donald Bylsma, Jr., and Robert Blackburn, "Some Consequences of Collective Negotiations in Higher Education," Phi Delta Kappan, October, 1972.

Since some of this power is now shared between the Chancellor and the Academic Senate Division, a power "rise" could conceivably rob the Senate of some of its present jurisdiction, contrary to the expectations of the UC-AFT and CCUFA. The Berkeley Senate Division, as discussed earlier in the paper, is already voicing its criticism of a tendency in this direction. Sanford Kadish believes that collective bargaining in this form would transform academic decision-making to a political process:

. . . the process . . . tends to remit issues which faculty should themselves determine to outside agencies, such as state and federal boards, arbitrators, and union bureaucracies. In addition, since unions rest on continued support of their constituency, the process becomes susceptible to essentially political rather than essentially academic decision-making.²³

Even where bargaining units are confined to a single public campus, there may be a tendency for administrative power to shift off-campus to a higher authority. President O'Dowd of Michigan's Oakland University comments that

. . . one of the temptations that will begin to emerge is (for campus administrators) to turn to legislatures and to governing boards, saying, 'Help us out.' Here we are - we're caught between declining state support and rapidly rising costs, particularly personnel costs through collective bargaining. We need some help, and the kind of help we can get is to turn to a central agency. . . .²⁴

Another likely impact of formal collective bargaining is that administrators move closer to their industrial counterparts in performing

²³ Sanford H. Kadish, op. cit., p. 122.

²⁴ O'Dowd, op. cit., p. 39.

management functions. President O'Dowd, speaking from his experience in dealing with an AAUP bargaining agent, notes that administrators become conscious of being responsible for "management decisions covering a whole variety of things, including traditional areas of faculty prerogative."²⁵ Administrators, says O'Dowd, begin to realize that their primary function is "to see to it that the goals of the institution are pursued directly and consciously."²⁶ To perform effectively at the bargaining table and in contract implementation, the administration may require augmenting its ranks with lawyers, data processors, and similar specialists. As the need increases for those specifically trained in management skills, the traditional generalist may find himself expendable. Professor Wollett believes that many academicians now holding administrative titles are unsuited to this new style of academic governance and will be forced out.²⁷

In summary, changes one could expect in governance and administration at Berkeley as a result of the advent of formal collective bargaining by academic employees may include:

1. Formalization of power relationships between administration and faculty.
2. Specificity of rules and regulations within and between administration and faculty.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Wollett presentation, op. cit.

3. Shift of administrative power off campus to centralized agencies.
4. An increase in administrative power and consequent loss of faculty power.
5. Administrators performing more management functions.
6. Specialists replacing generalists in administration.

Thus, not only will administration very likely play a larger role in campus governance either directly or through centralized entities, but there will be at the same time a change in the nature of administrative functions and personnel. Figure 3 illustrates how adversary collective bargaining may change formal power relationships at UCB.

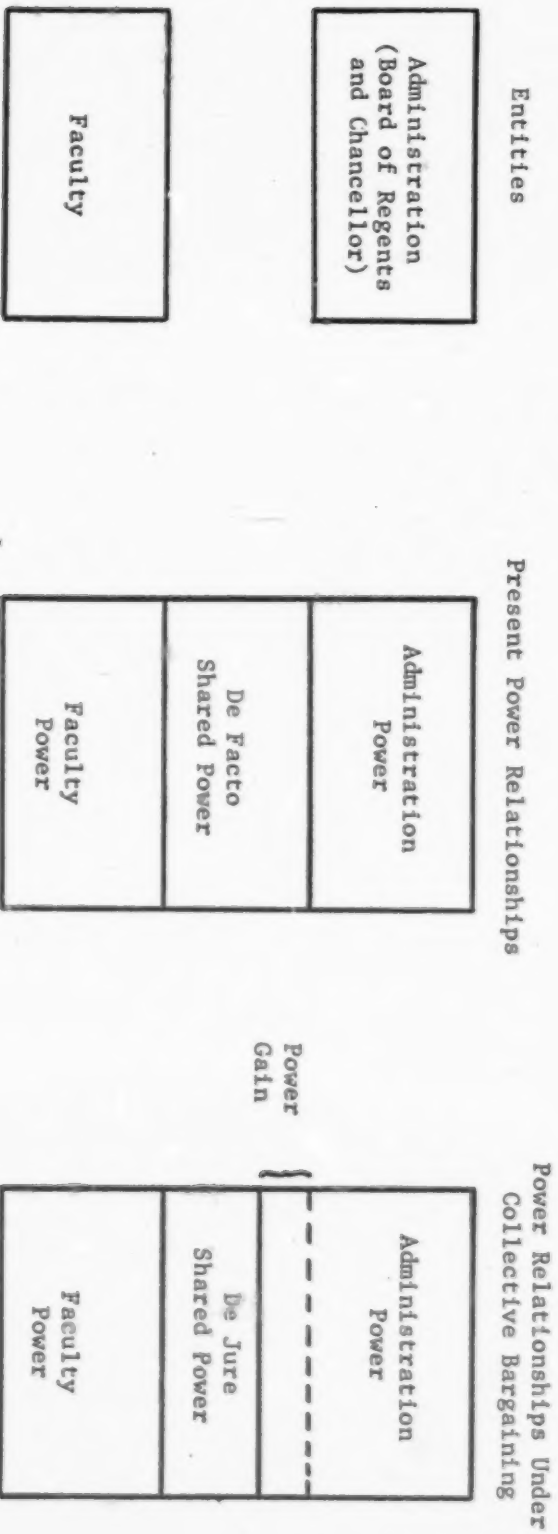
Students *

Sanford Kadish noted in his last address as president of the AAUP that the Association's traditional adherence to faculty autonomy is being threatened by "the new consumerism . . . we associate with the name of Ralph Nader" and by growing commitment to political democracy.²⁸ Kadish specifically had reference to the desire of students to play a larger role in campus governing bodies composed of faculty, administrators, and students. (Harold Hodgkinson has discovered that some 660 institutions have such broadly based governing bodies.²⁹).

²⁸ Kadish, op. cit. p. 124.

²⁹ Harold Hodgkinson, "Committology," Management Forum, February, 1973.

Figure 3: Formal Power Relationships at UCB



Formal collective bargaining may deal a death blow to both the new consumerism and the commitment to political democracy. Alan Shark, Chairman of the CUNY Student Senate, claims the introduction of system-wide collective bargaining on New York campuses terminated the small role students had begun to play in policy formation.³⁰ He urges that bilateral determination of issues give way to trilateral bargaining where students are included. Failure to give students a voice in campus decision-making could result, claims Shark, in renewed student agitation.

As consumers, students feel that they ought to have some influence over issues such as faculty salaries and curriculum development, since they are most directly affected. Formal collective bargaining, however, has never included anyone other than employers and employees.^{30a} Since most students are not employees of the institution, collective bargaining as currently practiced would appear to exclude them.

David L. Kirp, Acting Associate Professor of the Berkeley Graduate School of Public Policy and Lecturer in the Berkeley Law School, believes that because "policy making in public education is properly a political enterprise," students as well as other interest

³⁰ Alan Shark, "A Student's Collective Thought on Bargaining," Journal of Higher Education, October, 1972.

^{30a} Note discussion of the novel attempt by Boston State College and by Southeastern Massachusetts University to provide in the language of the contract for student participation in governance in Carr & VanEyck, Collective Bargaining Comes to the Campus, op. cit., pp. 261ff. See also discussion of the provision granting student participation in bargaining contained in the now-vetoed Moscone Bill, supra, p. 70.

groups, ought to have some input into the process.³¹ He suggests several approaches to making this possible while at the same time avoiding disruption of traditional bipartite bargaining. One possibility is to require bargaining participants to "meet and confer" with interest groups, including students.

Conclusion

The purpose of this final section has been, to take a line from Sanford Kadish's AAUP presentation, "to pose the predicament, not resolve it." Resolution, as noted at the beginning of this section, depends to a large extent on one's belief system about the proper role of institutions of higher education in our society. To what extent, as Kadish claims, is decision-making in higher education an academic process? To what extent is Kirp correct in labeling policy making in public education a political process?

The answer we give will depend not only upon our belief systems but also on the kind of institution we are discussing. Community colleges are closer to secondary schools in being more service-oriented than universities, while the latter are engaged to a much greater extent in the quest for new knowledge. To perform their research function, universities allow faculty members great autonomy and freedom to

³¹ David L. Kirp, "Collective Bargaining: Professionals as a Political Interest Group," Journal of Public Law 21, 1972, p. 337.

pursue their individual specialties. Formal collective bargaining carried over from the industrial sector and from elementary and secondary schools would therefore appear to fit better into the framework of the community college.

In the case of institutions like UCB, the ultimate question is whether collective bargaining can and should be accommodated in such a way as to preserve the traditional manner of functioning. Sanford Kadish, like the Berkeley Faculty Association, feels that collective bargaining must be tailor-made for the university.

Collective bargaining might be absorbed, though with some strain, into an acceptable theory of the profession to the extent it takes form which exclude external, non-academic control and shores up, rather than displaces, traditional faculty self-government.³²

The UC-AFT and CCUFA believe that it is the institution which must change, not the style of collective bargaining. At the moment, the political forces which will decide the question are favoring the latter position.

³² Kadish, op. cit., p. 125.

Appendix One

George Brown Act

3525. It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations between the State of California and its employees by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice and be represented by such organizations in their employment relationships with the state. Nothing contained herein shall be deemed to supersede the provisions of existing state law which establish and regulate a merit or civil service system or which provide for other methods of administering employer-employee relations. This chapter is intended, instead, to strengthen merit, civil service and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between employees and the state.

3526. As used in this chapter:

(a) "Employee organization" means any organization which includes employees of the state and which has as one of its primary purposes representing its members in employer-employee relations.

(b) The provisions of this chapter apply only to the State California. The "State of California" as used in this chapter means such state agencies, boards, commissions, administrative officers, or other representatives as may be designated by law.

(c) "Public employee" means any person employed by the state, including employees of fire departments or fire services of the state, excepting those persons elected by popular vote or appointed to office by the Governor of this state.

3527. Except as otherwise provided by the Legislature, state employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. State employees also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the state.

3528. Employee organizations shall have the right to represent their members in their employment relations, including grievances, with the state. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership. Nothing in this section shall prohibit any employee from appearing in his own behalf or through his chosen representative in his employment relations and grievances with the state. (Amended 1972.)

3529. The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment.

3530. The state by means of such boards, commissions, administrative officers or other representatives as may be properly designated by law, shall meet and confer with representatives of employee organizations upon request, and shall consider as fully as such representatives deem reasonable such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

3531. The state and employee organizations shall not interfere with, intimidate, restrain, coerce, or discriminate against state employees because of their exercise of their rights under Section 3527.

3532. The state may adopt reasonable rules and regulations for the administration of employer-employee relations under this chapter.

Such rules and regulations may include provisions for (a) verifying that an organization does in fact represent employees of the state (b) verifying the official status of employee organization officers and representatives (c) access of employee organization officers and representatives to work locations (d) use of official bulletin boards and other means of communication by employee organizations (e) furnishing confidential information pertaining to employment relations to employee organizations (f) such other matters as are necessary to carry out the purposes of this chapter.

For employees in the state civil service, rules and regulations in accordance with this section may be adopted by the State Personnel Board.

3533. Professional employees shall not be denied the right to be represented separately from nonprofessional employees by a professional employee organization consisting of such professional employees.

"Professional employees," for the purposes of this section, means employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to, attorneys, physicians, registered nurses, engineers, architects, teachers, and the various types of physical, chemical, and biological scientists.

3534. In addition to those rules and regulations the state may adopt pursuant to and in the same manner as in Section 3532, the state may adopt reasonable rules and regulations providing for designation of the management and confidential employees of the state and restricting such employees from representing any employee organization, which represents other employees of the state, on matters within the scope of representation. Except as specifically provided otherwise in this chapter, this section does not otherwise limit the right of employees to be members of and to hold office in an employee organization.

3535. The state may, in accordance with reasonable standards, designate positions or classes of positions which have duties consisting primarily of the enforcement of state laws, and may by resolution adopted after a public hearing, limit or prohibit the right of employees in such positions or classes of positions to form, join or participate in employee organizations where it is in the public interest to do so; however, the state may not prohibit the right of its employees who are full-time "peace officers," as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, to join or participate in employee organizations which are composed solely of such peace officers, which concern themselves solely and exclusively with the wages, hours, working conditions, welfare programs, and advancement of the academic and vocational training in furtherance of the police profession, and which are not subordinate to any other organization.

The right of employees to form, join and participate in the activities of employee organizations shall not be restricted by the state on any grounds other than those set forth in this section.

3536. The enactment of this chapter shall not be construed as making the provisions of Section 923 of the Labor Code applicable to public employees.

Appendix Two

Observations of Berkeley Interviewer in Earl Cheit, New Depression in Higher Education, McGraw-Hill, 1971, pp. 100-101.

University of California, Berkeley. The student-faculty ratio is rising. One research institute in the social sciences has been eliminated. Seven other research units (including earthquake engineering and urban social problems) are forced to operate without a regular support budget. Others, such as an institute on race and community relations, are only partially funded. Administrators report that an "indeterminate number" of proposed new courses have been postponed, as have plans for development of a medical school. Some courses, such as freshman seminars, have been cut. The summer quarter was eliminated to save expenses; as a result, the state withdrew funding for 208 new faculty positions, most of them unfilled, that would have been required for year-round campus operation. Summer instruction will now have to be on a self-supporting basis. The number of graduate students and teaching assistants is being reduced. There are no capital funds. Plans for administrative growth were shelved, and the number of administrative posts was reduced. Cuts have been made in community service and various research programs. Administrators believe that the fact that faculty received no salary increase in 1970-71 has had an adverse effect.

WHERE FACULTIES HAVE CHOSEN COLLECTIVE-BARGAINING AGENTS

Following are 286 institutions of higher education where faculty members have named agents to represent them in collective bargaining. Numbers in parentheses following the names of multi-campus systems indicate the number of institutions in

those systems. The list is based on information from the three national bargaining agents and independent surveys. An asterisk (*) indicates institutions represented by the New York teacher's union, which is affiliated with both the N.E.A. and the A.F.T.

NATIONAL EDUCATION ASSOCIATION

Four-Year Institutions
Central Michigan U.
City U of New York (19)*
Columbia U—C of
Pharmaceutical
Sciences, N.Y.
Detroit C of Business,
Mich.
U of Dubuque, Iowa
Ferris State C, Mich.
Fitchburg St C, Mass.
Loretto Heights C, Colo.
Monmouth C, N.J.
Nebraska St C System (4)
North Adams St C, Mass.
Pennsylvania St C and U
System (14)
Roger Williams College,
R.I.
Saginaw Valley C, Mich.
Salem St C, Mass.
State U of New York
(26)*
Westfield St C, Mass.
Youngstown St U, Ohio

Two-Year Institutions
Adirondack CC, N.Y.*
Alpena CC, Mich.
Atlantic CC, N.J.
C of Beaver Cnty, Pa.
Bellevue CC, Wash.
Bergen CC, N.J.
Big Bend C, Wash.
Brookdale CC, N.J.
Broome Tech CC, N.Y.*
Burlington Cnty C, N.J.
Butler Cnty CJC, Kan.
Camden Cnty C, N.J.
Centralia C, Wash.
Cloud Cnty CJC, Kan.
Columbia Basin CC,
Wash.

Columbia-Greene CC,
N.Y.*
College of Lake Cnty, Ill.
Cumberland Cnty C,
N.J.
Dutchess CC, N.Y.*
Edmonds CC, Wash.
Essex Cnty C, N.J.
Everett CC, Wash.
Fashion Inst of Tech,
N.Y.*
Ft. Steilacoom CC,
Wash.
Fox Valley Tech Inst.
Wis.
Garden City CJC, Kan.
Gateway Tech Inst, Wis.
Genesee CC, Mich.
Glen Oaks CC, Mich.
Gögebic CC, Mich.
Grays Harbor C, Wash.
Highline CC, Wash.
Hutchinson CJC, Kan.
Independence CJC, Kan.
Jackson CC, Mich.
Kalamazoo Valley CC,
Mich.
Kansas City CJC, Kan.
Kellogg CC, Mich.
Labette CJC, Kan.
Lake Land C, Ill.
Lake Shore Tech Inst.
Wis.
Lansing CC, Mich.
Lehigh Cnty CC, Pa.
Lower Columbia C, Wash.
Luzerne Cnty C, Pa.
Maine Voc Tech Insts (6)
Massachusetts CC, Mass.
Mercer Cnty CC, N.J.
Mid-Michigan CC
Mid-State Tech Inst, Wis.

Minnesota St JC
System (18)
Mohawk Valley CC, N.Y.*
Moraine Park Tech Inst.
Wis.
Monroe CC, N.Y.*
Monroe Cnty CC, Mich.
Montcalm CC, Mich.
Mt. Machusett CC, Mass.
Muskegon CC, Mich.
Nassau CC, N.Y.*
North Central Tech Inst.
Wis.
Oakland CC, Mich.
Ocean City C, N.J.
Olympia Voc Tech Inst.
Wash.
Olympic C, Wash.
Onondaga CC, N.Y.*
Passaic CC, N.J.
Peninsula C, Wash.
Rhode Island JC
Rockland CC, N.Y.*
St. Clair Cnty CC, Mich.
Sauk Valley C, Ill.
Schoolcraft C, Mich.
Shoreline CC, Wash.
Skagit Valley C, Wash.
Southwestern Michigan C
Spokane CC, Wash.
Suffolk Cnty CC, N.Y.*
Tompkins-Cortland CC,
N.Y.*
Walla Walla CC, Wash.
Washtenaw CC, Mich.
Waukesha Cnty Tech
Inst, Wis.
Wenatchee Valley C,
Wash.
Westchester CC, N.Y.*
Westmoreland CC, Pa.
Williamsport Area CC, Pa.
Yakima Valley C, Wash.

AMERICAN FEDERATION OF TEACHERS

Four-Year Institutions
Boston St C, Mass.
Bryant C, R.I.
City U of New York (19)*
U of Hawaii (8)
Layton Sch of Art and
Des, Wis.
Long Island U, Brooklyn
Center, N.Y.
Long Island U, C. W.
Post Center, N.Y.
Lowell St C, Mass.
Massachusetts C of Art
Moore C of Art, Pa.
New Jersey St C System
(6)
Pratt Inst, N.Y.
Rhode Island C
Southeastern
Massachusetts U
State U of New York
(26)*
Taylor Business Inst,
N.Y.
U.S. Merchant Marine
Academy, N.Y.
Worcester St C, Mass.

Two-Year Institutions
Adirondack CC, N.Y.*
CC of Allegheny Cnty, Pa.
CC of Baltimore, Md.
Black Hawk Voc Tech
Sch, Wis.
Bristol CC, Mass.
Broome Tech CC, N.Y.*
Bucks Cnty CC, Pa.
Chicago City Colleges,
Ill. (7)
Columbia-Greene CC,
N.Y.*
Dutchess CC, N.Y.*
Eau Claire Tech Inst, Wis.
Fashion Inst of Tech,
N.Y.*
Gloucester Cnty CC, N.J.
Green River CC, Wash.
Henry Ford CC, Mich.
Highland CC, Ill.
Highland Park CC, Mich.
Indian Head Tech Inst,
Wis.
Illinois Valley CC
Joliet JC, Ill.
Lake Michigan C, Mich.

Madison Area Tech C,
Wis.
Milwaukee Area Tech C,
Wis.
Middlesex Cnty C, N.J.
Mohawk Valley CC, N.Y.*
Monroe CC, N.Y.*
Moraine Valley CC, Ill.
Morton C, Ill.
Nassau CC, N.Y.*
Northeast Wisconsin
Tech Inst
Onondaga CC, N.Y.*
CC of Philadelphia, Pa.
Prairie St C, Ill.
Rockland CC, N.Y.*
Seattle CC, Wash.
Somerset Cnty C, N.J.
Suffolk Cnty CC, N.Y.*
Superior Tech Inst, Wis.
Tacoma CC, Wash.
Thorton CC, Ill.
Tompkins-Cortland CC,
N.Y.*
Wayne Cnty CC, Mich.
Westchester CC, N.Y.*
Wash Tech Inst, D.C.
Waubensee CC, Ill.

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

Four-Year Institutions
Adelphi U, N.Y.
Ashland C, Ohio
Bard C, N.Y.
U of Delaware
Dowling C, N.Y.
Hofstra U, N.Y.
Lincoln U, Pa.

New Jersey C of
Med and Dent
New York Inst of Tech
Oakland U, Mich.
Poly Inst of Bklyn., N.Y.
Regis C, Colo.
U of Rhode Island
Rutgers U, N.J.

St. John's U, N.Y.
Temple U, Pa.
Wayne St U, Mich.

Two-Year Institutions
Belleville Area C, Ill.
Indian River CC, Fla.
Robert Morris C, Ill.

INDEPENDENT AGENTS

Four-Year Institutions
Detroit C of Business
Fordham U Law School
Newark C of
Engineering, N.J.
U of Scranton, Pa.
Temple U Law School
U of Oregon—Tongue
Pt Job Corps Center
U of Wisconsin-Madison
(teaching agents)

Two-Year Institutions
Auburn CC, N.Y.
Bay De Noc CC, Mich.
Clark C, Wash.
Clinton CC, N.Y.
Colby CJC, Kan.
Erie CC, N.Y.
Fulton-Montgomery CC,
N.Y.
Genesee CC, N.Y.
Grand Rapids JC, Mich.
Hudson Valley CC, N.Y.
Jamestown CC, N.Y.

Jefferson CC, N.Y.
Kirtland CC, Mich.
Macomb Cnty CC, Mich.
Miles CC, Mont.
Niagara C, N.Y.
North Country CC, N.Y.
Orange City CC, N.Y.
Schenectady CC, N.Y.
Southwest Wisconsin
Voc Tech Inst
Uster Cnty CC, N.Y.
Western Wisconsin Tech
Inst

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1973

Appendix Four

**Table 106.—Faculty and other professional staff in institutions of higher education, by type of position:
United States, first term 1959-60 to 1971-72**

Type of position	Number of positions						
	1959-60	1961-62	1963-64	1965-66 ¹	1967-68 ¹	1969-70 ¹	1971-72 ¹
1	2	3	4	5	6	7	8
All professional staff ²	418,788	464,658	544,719	659,000	782,000	871,000	933,000
Professional staff for general administration, student personnel services, and for libraries	43,965	48,164	58,367	71,000	84,000	91,000	97,000
Professional staff for resident instruction							
in degree-credit courses	281,506	310,772	355,542	435,000	521,000	578,000	617,000
instructor or above	242,914	264,749	302,896	370,000	443,000	491,000	524,000
Full-time	162,292	177,052	202,396	247,000	296,000	328,000	350,000
Part-time	80,622	87,697	100,500	123,000	147,000	163,000	174,000
Junior instructional staff	38,592	46,023	52,646	65,000	78,000	87,000	93,000
Professional staff for organized research	36,836	49,626	64,503	67,000	72,000	80,000	86,000
Professional staff for extension courses, resident non-degree-credit courses, instruc- tion by mail, radio or TV, short courses, and individual lessons	56,481	56,106	66,307	86,000	105,000	122,000	133,000

¹ Estimated.

² Excludes professional staff for instruction at the elementary and secondary school level. Data are in terms of professional positions, not persons.

SOURCE: U.S. Department of Health, Education, and Welfare, Office of Education, circulars on *Faculty and Other Professional Staff in Institutions of Higher Education*, and Office of Education estimates.

from: Digest of Educational Statistics,
1971 Edition (Govt. Printing Office)

APPENDIX Five

By-Laws and Standing Orders of the Regents

ACADEMIC SENATE

105.1 Organization of the Academic Senate.

(a) The Academic Senate shall consist of the President, Vice Presidents, Chancellors, Vice Chancellors, Deans, Provosts, Directors of academic programs, the chief admissions officer on each campus and in the Office of the President, registrars, the University Librarian on each campus of the University, each lecturer who has full-time teaching responsibilities in any curriculum under the control of the Academic Senate and whose academic title is Senior Lecturer with Security of Employment or Lecturer with Security of Employment, and each person giving instruction in any curriculum under the control of the Academic Senate whose academic title is Instructor, Instructor in Residence, Assistant Professor, Assistant Professor in Residence, Associate Professor, Associate Professor in Residence, or Acting Associate Professor, Professor, Professor in Residence, or Acting Professor; however, Instructors and Instructors in Residence of less than two (2) years' service shall not be entitled to vote. Members of the faculties of professional schools offering courses at the graduate level only shall be members also of the Academic Senate, but, in the discretion of the Academic Senate, may be excluded from participation in activities of the Senate that relate to curricula of other schools and colleges of the University. Membership in the Senate shall not lapse because of leave of absence or by virtue of transference to emeritus status.

(b) The Academic Senate shall determine its own membership under the above rule, and shall organize, and choose, its own officers and committees in such manner as it may determine.

(c) The Academic Senate shall perform such duties as the Board may direct and shall exercise such powers as the Board may confer upon it. It may delegate to its divisions or committees, including the several faculties and councils, such authority as is appropriate to the performance of their respective functions.

APPENDIX Six

EXCERPTS FROM 1966 STATEMENT ON GOVERNMENT OF COLLEGES AND UNIVERSITIES

The faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty

The faculty sets the requirements for the degrees offered in course, determines when the requirements have been met, and authorizes the president and board to grant the degrees thus achieved.

Faculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is central to general educational policy. Furthermore, scholars in a particular field or activity have the chief competence for judging the work of their colleagues; in such competence it is implicit that responsibility exists for both adverse and favorable judgments. Likewise there is the more general competence of experienced faculty personnel committees having a broader charge. Determinations in these matters should first be by faculty action through established procedures, reviewed by the chief academic officers with the concurrence of the board. The governing board and president should, on questions of faculty status, as in other matters where the faculty has primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.